

ORIGINAL

REPORTER'S RECORD

VOLUME 38 OF 51

TRIAL COURT CAUSE NO. 241-0978-04

THE STATE OF TEXAS * IN THE DISTRICT COURT
VERSUS * SMITH COUNTY, TEXAS
TRACY BEATTY * 241ST JUDICIAL DISTRICT

TRIAL ON THE MERITS - P.M. SESSION

AUGUST 2, 2004

FILED IN
COURT OF CRIMINAL APPEALS

JUN 14 2005

Troy C. Bennett, Jr., Clerk

On the 2nd day of August, 2004, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the HONORABLE JACK SKEEN, JR., Judge
Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by computerized stenotype machine;
Reporter's record produced by computer-assisted
transcription.

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

A P P E A R A N C E S

MR. D. MATT BINGHAM, III
State Bar Number 00787085
Smith County Criminal District Attorney

MR. J. BRETT HARRISON
State Bar Number 00793909
MS. APRIL SIKES
State Bar Number 18348790
Assistant Smith County District Attorneys
Smith County Courthouse, Fourth Floor
Tyler, Texas 75702
Telephone: 903.535.0520
Fax: 903.535.0599

REPRESENTING THE STATE OF TEXAS

MR. ROBERT C. PERKINS, JR.
State Bar Number 15790405
MR. KENNETH HAWK
State Bar Number 09243650
Attorneys at Law
112 East Line Street, Suite 202
Tyler, Texas 75702
Telephone: 903.593.7780

REPRESENTING THE DEFENDANT

REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily
indicate a direct quote.

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

I N D E X

VOLUME 38 OF ____

(TRIAL ON THE MERITS)

	PAGE	VOL
AUGUST 2, 2004 (P.M.)		
STATE'S WITNESSES:	Direct	Cross
BETTY MCCARTY		
By Mr. Harrison	35	38
By Mr. Perkins	12	38
OUTSIDE THE PRESENCE OF THE JURY:		
Defense objection to State's Exhibits 3 and 18.....	52	38
The Court's ruling - Objection overruled.....	61	38
Defense proffer of testimony.....	62	38
STATE'S WITNESSES:		
BETTY MCCARTY		
By Mr. Perkins	63	38
State's objection.....	66	38
The Court's ruling - Objection sustained.....	68	38
Defense Bill of Exception.....	70	38
STATE'S WITNESSES:	Direct	Cross
BETTY MCCARTY		
By Mr. Harrison	72, 90	38
By Mr. Perkins	75	38
ROY TOMLIN		
By Mr. Bingham	92	38
JAY PATZKE		
By Mr. Harrison	112	38
By Mr. Perkins	115	38

I N D E X - CONTINUED

VOLUME 38 OF _____

(TRIAL ON THE MERITS)

	PAGE	VOL
AUGUST 2, 2004 (P.M.)		
OUTSIDE THE PRESENCE OF THE JURY:		
STATE'S WITNESSES:	Voir Dire	
JAY PATZKE		
By Mr. Perkins	115,121	38
By Mr. Harrison	120	38
Defense Motion for Mistrial.....	119	38
The Court's ruling - Objection overruled.....	121	38
Motion for Mistrial denied.....	121	38
STATE'S WITNESSES:	Direct	Cross
JAY PATZKE		Voir Dire
By Mr. Harrison	126,128	38
	131	38
By Mr. Perkins	127,130	38
	132	38
STACEY KILLOUGH		
By Mr. Bingham	135,153	38
	202	38
By Mr. Perkins	157, 196	152 38
Court Reporter's Certificate.....	207	38

ALPHABETICAL WITNESS INDEX

WITNESS:	Direct	Cross	Voir Dire	VOL
MCCARTY, BETTY				
By Mr. Harrison	35, 72			38
	90			38
By Mr. Perkins		12, 75	63	38

5

ALPHABETICAL WITNESS INDEX - CONTINUED					
WITNESS:	Direct	Cross	Voir Dire	VOL	
KILLOUGH, STACEY					
By Mr. Harrison	135,153				38
	202				38
By Mr. Perkins		157,196	152		38
PATZKE, JAY					
By Mr. Harrison	112				38
By Mr. Perkins			115		38
(No jury)					
By Mr. Harrison			120		38
By Mr. Perkins			115,121		38
(With jury)					
By Mr. Harrison	126,128				38
	131				38
By Mr. Perkins		127,130			38
		132			38
TOMLIN, ROY					
By Mr. Bingham	92				38

EXHIBITS INDEX					
STATE'S					
NO.	DESCRIPTION	OFFERED	ADMITTED	VOL	
3	Cross ring	50	62		38
18	Photo of victim	50	62		38
20	Divorce decree	43	43		38
21	Betty McCarty's statement	37	[41]		38
22	Photo of defendant	97	97		38
23	Blowup photo of ring on finger	16	16		38
DEFENDANT'S					
NO.	DESCRIPTION	OFFERED	ADMITTED	VOL	
1	Certificate	126	126		38
		(Record only)			

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR
 241ST JUDICIAL DISTRICT COURT
 SMITH COUNTY, TEXAS

P R O C E E D I N G S

(August 2, 2004)

(Open court, defendant present, no jury.)

THE COURT: Are we on the record, Kim?

THE COURT REPORTER: Yes, sir.

THE COURT: Well, hang on a minute.

All right. Back on the record in Cause
Number 241-0978-04, State's present; defense counsel is
present; defendant is present.

Go ahead, Mr. Harrison.

MR. HARRISON: Actually, if I could just have
a moment.

THE COURT: Sure.

MR. HARRISON: Judge, are we on the record?

THE COURT: We're on the record.

MR. HARRISON: Judge, I guess at this time we
would have -- I would make an oral motion in limine to
prohibit the Defense -- pardon me -- from going into
questioning regarding an alleged suicide attempt by the
victim while she was -- during her teenage years.

I discussed it with Mr. Perkins, and he's
indicated that that might be an area that they would want to
go into. I don't believe it would have any relevance at all
on any issue.

THE COURT: With this witness?

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 MR. HARRISON: Yes, Judge. I think the
2 victim had talked with Mr. --

3 THE BAILIFF: All rise for the jury.

4 (The jury enters the courtroom.)

5 (Open court, defendant and jury present.)

6 THE COURT: Be seated, please. Thank you.

7 (At the bench, on the record.)

8 MR. HARRISON: Judge, I think the victim had
9 told Ms. McCarty at some point that she had attempted
10 suicide as a teenager, and that's the reason why there's a
11 bullet that's actually still in the body of Ms. Click, the
12 victim. Our position would be that it would have no
13 relevance to any issue in this case, and I don't believe
14 that it would be admissible.

15 THE COURT: What would be the relevance?

16 THE COURT REPORTER: I didn't hear that.

17 MR. HARRISON: I didn't say anything.

18 THE COURT: What would be the relevance?

19 MR. PERKINS: The relevance is this: First
20 of all, there's been testimony from this very witness that
21 he had previously assaulted her, that the defendant had
22 previously assaulted Carolyn Click.

23 There's going to be evidence later on during
24 the autopsy that they recovered a bullet from her body. I
25 think it's referred to in the autopsy as a remote, unrelated

1 gunshot. We feel like we're entitled to clear up the fact
2 that he did not shoot her.

3 THE COURT: Okay. Here's what I'll do. I
4 want this witness -- I want this witness kept under the
5 Rule, subject to re-call, where the testimony comes in from
6 the pathologist like to have that bullet recovered from her.
7 I'm going to let you explain --

8 MR. HARRISON: We're not going to go into
9 that with the pathologist. We're not bringing up any
10 testimony about that. That doesn't have anything to do with
11 this case.

12 MR. PERKINS: Well, here's the --

13 THE COURT: What's the relevance? If I
14 understand, that's the -- your relevancy is that a bullet
15 was recovered from her body would be able to explain that he
16 didn't shoot her, that she tried to commit suicide?

17 MR. PERKINS: That's right.

18 THE COURT: Well, if there was a bullet, then
19 I'll allow you to re-call this witness or put someone else,
20 if you have someone else, that would be able to testify to
21 that.

22 MR. PERKINS: And, Judge, the other thing it
23 goes to is as to how much she confided in this witness. She
24 talked about they talked about lots of things. And the
25 State got to talk about her saying that she had been

1 assaulted in the past by him and stuff. I mean --

2 THE COURT: Well, here's the thing. I don't
3 think the fact that right now as it stands, I don't think
4 the fact that she tried to attempt -- she attempted suicide
5 as a teenager is relevant.

6 MR. PERKINS: Number one, I don't think it
7 was as a teenager.

8 THE COURT: Well, I don't know when it was.

9 MR. PERKINS: Well, and here's the thing, is
10 neither do I exactly. All I know is, is that it happened,
11 that it's the truth, and I don't want this jury to be left
12 with the false impression later on that this was somehow the
13 fault of the defendant in this case, and we feel like we're
14 entitled to clear that up.

15 THE COURT: That's what I just said. What
16 I'm saying is, if it comes into evidence, Mr. Perkins, that
17 it was probably removed from her, then you've got to be able
18 to clear that up.

19 MR. HARRISON: And I'll tell the Court we're
20 not going to proffer any evidence about any bullet.

21 THE COURT: That's the relevancy that I see
22 right now.

23 MR. PERKINS: So is the Court preventing me
24 from asking the question regarding her knowledge of the
25 alleged victim attempting suicide?

1 THE COURT: Unless you can show some
2 relevance to it. As it stands right now, I don't see any
3 relevance, based on her testimony, that this bullet --
4 what's the relevance as it stands right now?

5 MR. PERKINS: Well, I guess I could argue the
6 same thing that the State argued, that it goes to show the
7 prior relationship between the parties.

8 THE COURT: How does it show the prior
9 relationship if you're saying that she attempted suicide
10 herself?

11 MR. PERKINS: Well, I would like to explore
12 with this witness exactly what she told her about that.

13 THE COURT: Well, we'll have to take that up
14 outside the presence of the jury. Can you go through what
15 you need to go through, and if you want to take that up
16 later on, I need to excuse them and do it outside the
17 presence of the jury.

18 MR. PERKINS: Okay. That's fine.

19 (End of bench conference.)

20 THE COURT: Okay. Go ahead, Mr. Perkins.

21 (At the bench, on the record.)

22 MR. HAWK: I'm having a hard time keeping up
23 with a lot of these witnesses on the witness list because I
24 don't know who they are. And what I don't know is if a
25 bailiff is checking people's names when they come in. And

1 here's why: Because there's another person in the courtroom
2 that I believe to be one of the witnesses who may or may not
3 be called.

4 THE COURT: Are y'all watching the witnesses?

5 MR. HARRISON: Judge, as best we can, we're
6 trying to have somebody watching the door.

7 THE COURT: Well, the thing about it is he's
8 got a whole list of -- a page full of witnesses.

9 MR. HAWK: As long as I can find out who it
10 is that comes in, I'll check the list.

11 THE COURT: I'll get the names of -- get the
12 name of anyone that comes into the courtroom.

13 MR. HAWK: That will be great, and I'll be
14 checking the list then, Judge.

15 MR. HARRISON: And, Judge, obviously, the
16 list that we've provided is exhaustive. We're only calling
17 a very small portion of those people to actually testify.

18 MR. HAWK: Well, I understand that.

19 Thank you, Judge.

20 (End of bench conference.)

21 (Off-the-record discussion.)

22 THE COURT: Go ahead, Mr. Perkins, if you're
23 ready.

24 MR. PERKINS: I'm ready, Judge.

25 THE COURT: Are you ready?

1 MR. PERKINS: Just whenever, Judge.

2 THE COURT: Get her.

3 (The witness enters the courtroom.)

4 THE COURT: Ms. McCarty, come on back around,
5 please, to the witness stand. Just have a seat.

6 Okay, Mr. Perkins.

7 MR. PERKINS: Thank you, Judge.

8 BETTY MCCARTY,
9 having been previously sworn, testified as follows:

10 CROSS-EXAMINATION

11 BY MR. PERKINS:

12 Q. Afternoon, Ms. McCarty.

13 A. Good afternoon.

14 Q. What I want to do is I want to talk about some of
15 the things that you talked about with Mr. Harrison before
16 lunch, go back over some of the things that you talked about
17 and make sure that I understand them.

18 Now, you live next door to Carolyn Click; is
19 that right?

20 A. Yes, sir.

21 Q. And if I understand your testimony, you say that
22 she lived at that residence by herself -- by herself for
23 about 10 years, 10 to 11 years?

24 A. Eleven. Yes, uh-huh.

25 Q. Okay. During that 10-plus years, are you saying

1 that nobody lived there at the residence with her at all
2 during that time?

3 A. Well, she -- no one ever lived there. Somebody
4 might stay there a week if they needed a place to stay, but
5 that was only one time.

6 Q. Okay.

7 A. No one ever lived there.

8 Q. So other than Tracy Beatty, her son, living with
9 her starting in -- I believe your testimony was that he was
10 coming to stay with her in October of 2003?

11 A. Yes, sir.

12 Q. So October, November, and then him staying there
13 December, other than those three months, that nobody lived
14 in that mobile home with Carolyn Click other than Carolyn
15 Click?

16 A. Yes, sir, that's right.

17 Q. Okay. Do you know who James Everett Click is?

18 A. She married him while I was not at the -- living
19 at the mobile home. I didn't -- I did not know him.

20 Q. Okay. I guess maybe I need to back up then
21 because I'm a little mixed up about something. She was
22 married to James Everett Click until -- they were divorced
23 in like November of 1997. Do you know about that?

24 A. She told me that she had divorced him. I'm not
25 sure of the date.

1 Q. Okay. Maybe my math is just a little bit messed
2 up. Did James Everett Click live there with her during that
3 timeframe?

4 A. Yes, sir. That's what she told me. I did not
5 know the gentleman.

6 Q. Okay. Let me back up then. How long have you
7 been living next door to her?

8 A. I -- it was about 11 years ago, and then -- then
9 we moved to my house on Benchman for about a year and then
10 went back to the mobile home, and she married him in that
11 time, I presume, because I never knew him.

12 Q. So you think that they were married and divorced
13 during the period of time that you didn't live next door to
14 her?

15 A. Yes, sir.

16 Q. So let me make sure that I understand this. You
17 lived next door to her; she lived there by herself. You
18 moved away; it's your belief, from talking to Carolyn Click,
19 that during that time she got married to James Everett
20 Click.

21 A. Yes, sir.

22 Q. They got divorced. When you moved back there to
23 the same place, she was living there alone again.

24 A. She was living alone then, but the divorce was in
25 proceedings at that time.

1 Q. Okay.

2 A. But he did not live there.

3 Q. Okay. So you would have moved back sometime
4 probably then in 1997, if you remember?

5 A. I'm not sure of the date, no, sir.

6 Q. Okay. If they were divorced in November of 1997,
7 would that have been during the time that the divorce was
8 pending for lack of a better word?

9 A. Pending because it was not complete until after I
10 had -- we had gone back over there.

11 Q. So when you say that she lived there by herself
12 for 11 years, you don't mean 11 consecutive years. She
13 didn't live there by herself?

14 A. No. He -- he came while we were gone. At the
15 time that we were there, she has lived alone.

16 Q. Okay. All right. I just wanted to clear that up.

17 A. Yes, sir.

18 Q. The other thing is, is that -- if I understand
19 what you testified to, that you saw the defendant, Tracy
20 Beatty, starting, I believe, in October of 2003 over at
21 Carolyn Click's mobile home, and you knew that he was living
22 there.

23 A. Yes, sir.

24 Q. And I believe you characterized her as -- let me
25 see where I wrote it down -- as being excited that he was

1 coming to live with her?

2 A. Uh-huh. She was glad that he was coming, yes.

3 Q. And then when you saw them together -- and I would
4 say this would be when? In October, November of 2003 --
5 that it would be fair to say that there were times when you
6 would see Tracy Beatty there when Carolyn Click would not be
7 there and vice versa?

8 A. You mean after I didn't see her?

9 Q. No. No, ma'am. Before -- before, let's say,
10 Thanksgiving, there would be times when Tracy Beatty would
11 be there when Carolyn Click would not be there.

12 A. I don't remember talking about that, but --

13 Q. I'm just asking you.

14 A. I'm sure she might have gone to the grocery store,
15 but usually he rode with her. They would go to the grocery
16 store, and I would see them up at the gas station together,
17 but I'm not sure on that.

18 Q. Okay. Did you ever see Tracy Beatty driving a
19 vehicle other than Carolyn Click's station wagon?

20 A. He drove a pickup at one time.

21 Q. He drove a pickup?

22 A. Yes, sir.

23 Q. How many times did you see him driving that pickup
24 truck?

25 A. A couple of times.

1 Q. Okay. Do you know who that truck belonged to?

2 A. I'm not sure of his name, no, sir.

3 Q. Okay.

4 A. It had something to do with the mobile home, but I
5 don't know his name.

6 Q. Okay. You said it had something to do with a
7 mobile home?

8 A. With mobile homes. Tandem Mobile Homes, I believe
9 is where he's located.

10 Q. Okay. So --

11 A. He does cleanups and things.

12 Q. All right. And was that truck Tracy Beatty was
13 driving -- to your knowledge, was that in conjunction with
14 his work?

15 MR. HARRISON: Judge, objection. That's
16 going to be either speculative or based on hearsay.

17 THE COURT: All right. Well --

18 MR. PERKINS: If she knows.

19 THE COURT: -- if she knows.

20 A. Well, I don't know about his work, but I know he
21 drove it, but I didn't have any contact with him or know
22 what he was doing.

23 Q. (By Mr. Perkins) All right. Did Carolyn Click
24 tell you anything about how he was driving this other truck?

25 A. Well, she wasn't available at that time.

1 Q. So he was driving the truck when?

2 A. When I saw him was afterwards, that I didn't see
3 her anymore.

4 Q. After Thanksgiving?

5 A. Yes, sir.

6 Q. Okay. And how many times -- I mean, this may
7 sound silly, and it may be, but like you live right next
8 door to them for -- well, October, November, and then as
9 Tracy Beatty stayed into December.

10 A. Uh-huh.

11 Q. At least those three months, and at least two
12 months when the two of them would be there together; is that
13 safe...

14 A. From October to November.

15 Q. October to November?

16 A. Yes, uh-huh.

17 Q. Almost all of November?

18 A. Yes, uh-huh.

19 Q. On like a weekly average, how many times would you
20 see Tracy Beatty there at Carolyn Click's? Would it be
21 unusual to see him like every day, every other day, a few
22 times a week?

23 A. They were out and about most of the time, yes.

24 Q. You testified earlier that they usually went
25 places together and that -- and correct me if I'm wrong on

1 this, but most of the time she would be driving?

2 A. Yes, sir.

3 Q. Okay. Does that mean that some of the time he
4 would be driving?

5 A. I never saw him drive the vehicle.

6 Q. Okay. Then when you testified before lunch, why
7 didn't you say that all of the time she drove? Why did you
8 say that most of the time, she drove? Why didn't you say
9 that most of the time, she would be driving?

10 A. I don't know unless it meant -- the times I saw
11 him he wasn't driving. I don't know if he drove other times
12 or not.

13 Q. Okay. And that's fair.

14 A. Yeah.

15 Q. The times that you recall seeing them together,
16 she would be driving?

17 A. She was driving, yes, sir.

18 Q. Did you ever see her riding with him in the truck?

19 A. No, sir.

20 Q. Okay. I want to talk to you for a minute about
21 your relationship with Ms. Click. You described that
22 relationship as close, that you were good buddies.

23 A. Yes, sir.

24 Q. You talked over many things, and you mentioned
25 some of those things, when you were asked by the State,

1 regarding her relationship with Tracy Beatty; is that right?

2 A. Her relationship with him?

3 Q. Yes, ma'am.

4 A. Well, she mentioned that he had assaulted her,
5 yes.

6 Q. Okay. Do you recall when, during this period of
7 time that she mentioned that he had assaulted her?

8 A. Well, I can't remember the date. It was after we
9 had gotten to know one another better. I mean, it wasn't
10 something she told me when we first met.

11 Q. Was it -- it was, obviously, after the time that
12 you had moved back and were living next door to her.

13 A. Yes, sir.

14 Q. It's not before; is that safe to say?

15 A. I can't say exactly, but it -- like what I'm
16 trying to say, it wasn't something that she opened up to me
17 when I first met her.

18 Q. Okay.

19 A. We got to be --

20 Q. I'm sorry. Were you finished?

21 A. Yeah.

22 Q. I'm sorry.

23 A. Yes, sir.

24 Q. What I'm trying to put into context is -- here is,
25 was this -- I'm trying to put these two things together.

1 You say on one hand that she mentioned to you that he had
2 assaulted her -- I don't -- a couple of times?

3 A. Uh-huh.

4 Q. Several times?

5 A. Yes, sir.

6 Q. I don't know what you said.

7 Did she mention that to you before or after
8 she said that she was happy that he was moving back in with
9 her?

10 A. That was before.

11 Q. Okay. So, obviously, any assault that she says
12 happened to her happened before the time where she said,
13 "He's moving back in with me, and I'm pleased about this"?

14 A. Yes, sir.

15 Q. Okay. Do you recall -- do you have any way of
16 knowing when this alleged assault or assaults had occurred?

17 A. No, sir.

18 Q. Did she tell you anything about that?

19 A. You mean the ones before he came or something?

20 Q. Yes, ma'am.

21 A. She didn't -- no. She didn't tell me. She just
22 told me that he had done that to her.

23 Q. Okay. And despite that, she told you, you know,
24 "I'm -- he's coming to stay with me in October of 2003," and
25 she expressed what you considered to be that she was excited

1 or happy about that?

2 A. She was glad to have him back.

3 Q. All right. You also testified, Ms. McCarty, if I
4 got this down right, that she had asked -- and let me stop
5 to ask you a question. Is there -- in your mind, is there a
6 difference in me asking you to do something and me telling
7 you to do something?

8 A. Uh-huh.

9 Q. And what would that difference, in your mind, be?

10 A. If you ask me, I really don't have to say
11 anything; if you tell me, I have to.

12 Q. Okay. Which one do you think would be more
13 forceful in your mind: To ask somebody to do something or
14 tell somebody to do something?

15 MR. HARRISON: Well, Judge, I'm going to
16 object. It's not relevant in this witness's mind.

17 MR. PERKINS: I'll make it relevant on my
18 next question, Judge.

19 THE COURT: Okay. I'll allow her to ask.

20 Q. (By Mr. Perkins) Which one is more forceful in
21 your mind? If I ask you to do something or tell you to do
22 something, which one, in your mind, is more forceful?

23 A. Well, from an authority figure, it would probably
24 be tell me.

25 Q. Okay. The reason I ask you that is instead of

1 telling you that -- the reason I ask you that is, is because
2 I noticed that in your testimony before lunch, you said
3 that, on a couple of occasions -- once before she had asked
4 him to leave; is that correct?

5 A. Uh-huh.

6 Q. That she told you -- I'm sorry. You have to say
7 "yes" or "no." "Uh-huh" and "huh-uh" look the same to the
8 court reporter.

9 A. I'm sorry.

10 Q. That's all right.

11 That Carolyn had asked Tracy to leave one
12 time prior to November of 2003 --

13 A. Uh-huh.

14 Q. -- is that right?

15 A. The first time?

16 Q. Yes, ma'am.

17 A. Yes, sir.

18 Q. And when asked, he did leave for a period of time;
19 is that correct --

20 A. Yes.

21 Q. -- also?

22 A. That's correct.

23 Q. And apparently, whatever had prompted her to ask
24 him to leave in the first place was mended over; is that
25 safe to say?

1 A. I couldn't answer that. I don't know.

2 MR. HARRISON: Objection, speculation.

3 A. I don't know what they -- transpired between them.

4 THE COURT: Overruled.

5 Just let me rule on his objection, which is
6 overruled. She's answered the question.

7 Go ahead.

8 Q. (By Mr. Perkins) Did she talk to you about why she
9 moved back in?

10 A. No, sir, she did not.

11 Q. Did she express to you any kind of unhappiness or
12 displeasure that he was moving back in?

13 A. No, sir.

14 Q. In fact, wasn't it after he moved back in that she
15 told you that he was -- she was happy that he was there?

16 A. The second time?

17 Q. Yes, ma'am.

18 A. No, sir.

19 Q. Okay. When was --

20 A. You're talking about the first time.

21 Q. No, no, no. She asked him to leave; he left.

22 A. Uh-huh.

23 Q. He moves back in.

24 A. That's not the time I was talking about, the
25 second time.

1 Q. Okay.

2 A. I was talking about the first time that he was
3 coming to live with her.

4 Q. Okay. All right. And that's when she said that
5 she was happy that he was coming?

6 A. The first time.

7 Q. Okay. All right. She asked him to leave. He
8 leaves for about how long, if you know?

9 A. It was about a week and a half, I think.

10 Q. Okay. And then he comes back into the house. And
11 after that, she expressed no displeasure with him until the
12 second time she asked him to leave; is that fair?

13 A. She didn't say much about it, no, sir.

14 Q. Okay. And then she asked him again to leave --
15 didn't tell him but asked him to leave again in November; is
16 that correct?

17 A. No. Her words to me that afternoon is, "I told
18 Tracy to leave today."

19 Q. Ms. McCarty, I know that it's hard to remember
20 exactly what was said. Isn't it true that before lunch you
21 said that she asked him to leave? Didn't you say that
22 before lunch?

23 A. I might have used that phrase, but I remember her
24 what -- what I've been telling all along is she told him to
25 leave that day.

1 Q. Okay. Did she say specifically when or when she
2 had that conversation with him or when he was supposed to
3 leave by?

4 A. No, sir. I saw her at 4:00, and I didn't know
5 anything about it until that time. So I don't know what
6 time she told him.

7 Q. And I know that you've previously given a sworn
8 statement to the police department or the Sheriff's
9 Department, and you've had an opportunity, I'm sure, since
10 lunch to even talk to the District Attorney's Office,
11 haven't you?

12 A. About my testimony?

13 Q. Yes, ma'am.

14 A. No, sir.

15 Q. You haven't --

16 A. You mean after lunch?

17 Q. Yes, ma'am. Between the time that --

18 A. About my --

19 Q. Between the time -- I'm sorry. Between the time
20 that you stopped testifying and you started back this
21 afternoon, you have not visited with any member of the State
22 about your testimony?

23 A. About the testimony that I wrote, no, sir.

24 Q. About your testimony today.

25 A. About my testimony -- no, sir. No, sir. You mean

1 did they confront me about what I had already said? Is
2 that --

3 Q. Did they talk to you -- did any of those three
4 people sitting at that side of the table or anybody else in
5 the District Attorney's Office talk to you at all between
6 the time you stopped testifying at 12:15 today and started
7 testifying back at 1:15 today? Did you talk to any of those
8 people sitting over there?

9 A. They asked me what you asked -- wanted to know.
10 I'm sorry.

11 Q. So the answer to that would be yes, you did; is
12 that right?

13 A. Yes, sir.

14 Q. Okay. All right. So you did talk to them about
15 it about your testimony and what we were talking about.

16 A. No. It didn't concern my testimony, what you
17 asked me.

18 Q. Do you consider what you're doing right now
19 testifying?

20 A. Yes, sir.

21 Q. Now, let me ask you, you indicated that after the
22 25th when you had this conversation with Ms. Click at about
23 4:00 p.m. -- is that right, ma'am?

24 A. Yes, sir.

25 Q. That that's the last time you saw or talked to

1 her.

2 A. Yes, sir.

3 Q. Okay. Did you know where Tracy Beatty was at that
4 time?

5 A. No, sir.

6 Q. Had you seen him over at the house earlier that
7 day?

8 A. No, sir. I had been gone most of the day.

9 Q. Did you see him over at that house anymore that
10 day?

11 A. No, sir.

12 Q. Or the next day, which would be the 25th -- I'm
13 sorry -- the 26th.

14 A. The 26th, that was on a Wednesday?

15 Q. Yes, ma'am.

16 A. No, sir. I worked all day. I didn't see him.

17 Q. In fact, before lunch, you testified that the next
18 time that you saw Tracy Beatty was that weekend when you saw
19 him driving the car the weekend after Thanksgiving; is that
20 right?

21 A. No. I said that I saw him Thanksgiving morning
22 going from Ms. Wilkerson's over to Ms. Click's.

23 Q. Okay. That's right. You saw him walking --

24 A. Yes, sir.

25 Q. -- over in that direction. You said that you

1 didn't --

2 A. I didn't see him go in.

3 Q. You didn't see him go in the house, but you
4 assumed -- reasonably assumed, because you had seen him
5 going in and out of that house before, that that's where he
6 was headed?

7 A. Yes, sir.

8 Q. And you thought that that was strange that a
9 Thanksgiving would come and go without hearing anything out
10 of your friend, Callie; is that right?

11 A. Yes, sir.

12 Q. But you saw him on Thanksgiving morning --

13 A. Uh-huh.

14 Q. -- is that right?

15 A. Yes.

16 Q. And the first time you saw him driving the car
17 wasn't until the Saturday after?

18 A. Yes, sir, the weekend.

19 Q. Okay. So you saw her on Tuesday?

20 A. Yes, sir.

21 Q. And then Wednesday, Thursday, Friday all go by,
22 and then sometime Saturday is the first time you saw the
23 defendant sitting to my left right here driving the car?

24 A. Yes, sir.

25 Q. All right. Where was the car sitting in the

1 meantime?

2 A. It was -- they parked it in a -- she -- Ms. Click
3 pulled in the backyard and parked it in the backyard of the
4 house in between her trailer and the storeroom trailer.

5 Q. Okay. And can you -- and I don't really know, and
6 you can't really tell from those pictures exactly, but is it
7 where -- the fence that divides your yard from Ms. Click's
8 yard, can you see over or through that fence to see the car
9 out there?

10 A. Yes, sir. It's only about a 4-foot fence.

11 Q. Okay. Is it a chain link fence?

12 A. No, sir. It's a wire fence.

13 Q. Just a wire fence?

14 A. Yes, sir.

15 Q. And I think we can kind of see it in that picture.
16 I don't -- do you see that picture that's looking at me.
17 The jury can't see it, but you see that -- is it a fence
18 like that fence and --

19 A. No. That -- excuse me. That fence -- that fence
20 runs behind that storeroom trailer. That's not our house.

21 Q. Yes, ma'am, but is it a fence like that? I know
22 that's not the exact fence, but is it a wire fence like that
23 was?

24 A. Yes, it's -- yes, it's similar.

25 Q. Okay. And during the time between Tuesday and

1 Saturday, you could see Carolyn Click's car sitting behind
2 the house?

3 A. Yes, sir.

4 Q. Okay. During the time starting on Thanksgiving --
5 and let me just back up.

6 Tuesday is the last time you saw or talked to
7 Carolyn Click?

8 A. Yes, sir.

9 Q. Wednesday, you don't see anything out of her; you
10 don't hear anything out of her; you don't see anything or
11 hear anything out of Tracy Beatty?

12 A. No, sir, I worked all day.

13 Q. Okay. Thursday you see him walking from Lieanna
14 Wilkerson's house towards his house?

15 A. Uh-huh, across the road towards Ms. Click's.

16 Q. Okay. Friday you don't see or hear anything out
17 of either one of them?

18 A. No, sir. I work, again, on Friday.

19 Q. Okay. And then Saturday -- do you remember what
20 time it was Saturday that you saw Tracy Beatty driving the
21 car for the first time?

22 A. I don't remember. I don't remember what time
23 because I -- I just don't remember. I'm sorry.

24 Q. That's fine. And I know it's been a long time
25 ago. So if you knew, great, and if you didn't, that's fine,

1 too.

2 But it was that Saturday, that following
3 Saturday --

4 A. Yes, sir.

5 Q. -- which is one, two, three, four days after the
6 last time you saw or talked to her.

7 A. Uh-huh. And then that -- yeah, that was the last
8 time I saw her, was on a Tuesday.

9 Q. Okay. All right. During the time after that
10 Saturday when -- you would say that you would see him on
11 occasion, talk to him on occasion, see him out in the yard?

12 A. Yes, sir.

13 Q. And "him," I mean Tracy Beatty.

14 A. Tracy, yes, sir.

15 Q. When you would see him out in the yard, what would
16 he be doing?

17 A. Just working around in the yard, and there was a
18 lot of cats and animals out there, and, you know, he would
19 just be walking around and talking to the animals or
20 whatever.

21 Q. Tending to the animals?

22 Did Carolyn have cats in addition to the five
23 dogs that you talked about?

24 A. Uh-huh.

25 Q. And I know that you're saying yes, but I --

1 A. I'm sorry. Yes, sir.

2 Q. It's so hard to get used to that, and I'm as
3 guilty of it as anybody.

4 So it wouldn't be an uncommon thing to see
5 him at the house; the uncommon part of it was not seeing her
6 at the house; is that safe?

7 A. That's correct.

8 Q. Did you ever -- you know, in this conversation
9 that you had with Ms. Click, did she ever tell you, "Tracy
10 Beatty can't eat my food anymore"?

11 A. No, sir.

12 Q. Did she ever say, "Tracy Beatty can't use my car
13 anymore"? Did she ever say anything like that to you?

14 A. Directly stating those, no, sir.

15 Q. You never heard anything like that, did you?

16 A. No, sir.

17 Q. And if I understand what you've testified to, you
18 say Tommy Tucker, who -- does he live in the same trailer
19 with you?

20 A. Yes, sir.

21 Q. He eventually called the Smith County Sheriff's
22 Office, and this was on into December sometime, early
23 December --

24 A. Yes, uh-huh.

25 Q. -- is that right?

1 A. That's correct, sir.

2 Q. And this was during the time where nobody would be
3 over there for an extended period of time, and you would go
4 over and water the dogs and make sure that they had water
5 and stuff out there for him?

6 A. Uh-huh, yes, sir.

7 Q. And you saw Tracy at some time in December of 2003
8 out behind the house, and I believe that is in that picture
9 that we can see -- again, my eyes aren't that good enough to
10 tell you what State's exhibit that is -- burning stuff out
11 in that burn area.

12 A. Yes, sir.

13 Q. But you didn't know anything -- anything of that
14 at the time?

15 A. No, sir.

16 Q. And again, that was even further removed in time
17 from the last time that you saw Carolyn Click back
18 Tuesday -- you know, it was weeks after; is that safe to
19 say?

20 A. Well, it would have been like that next week or
21 so.

22 Q. A week or ten days after?

23 A. Uh-huh.

24 Q. Okay.

25 A. Yes, sir. I'm sorry.

1 MR. PERKINS: May I have just a second,
2 Judge?

3 THE COURT: Yes, sir.

4 (Defense counsel confer.)

5 MR. PERKINS: Ms. McCarty, I appreciate you
6 being down here.

7 We pass the witness, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HARRISON:

10 Q. I've got a few more questions for you,
11 Ms. McCarty, if I may.

12 A. All right. Thank you.

13 Q. Ms. McCarty, Mr. Perkins asked you if it was
14 uncommon to see Tracy Beatty in the victim's yard, and I
15 think you said no, he had lived there. Was it uncommon to
16 see him there in the victim's yard after November 25th,
17 2003, since she had kicked him out of the house?

18 A. Well, since I hadn't talked to her, I wondered why
19 he was -- you know, why he had come back. But I -- since I
20 hadn't talked to or saw her, you know, I...

21 Q. Is it fair to say the last conversation you ever
22 had with Carolyn Click, she had told you how she had told
23 the defendant --

24 A. Told him to leave.

25 Q. -- to get out of her house?

1 A. Yes, sir.

2 Q. And in that -- you never had any other
3 conversations with her after that?

4 A. No, sir.

5 Q. So that's the last thing --

6 A. That was the last time I saw or talked to her.

7 Q. And Mr. Perkins had asked you about asking the
8 defendant to leave versus telling the defendant to leave.

9 MR. HARRISON: May I approach, Your Honor?

10 THE COURT: Yes.

11 Q. (By Mr. Harrison) Let me show you for record
12 purposes what I've marked as State's Exhibit Number 21 and
13 ask you to identify what that is, just what it is.

14 A. Yes. That's my statement that I made describing
15 my last contact with her, and in there, that she had told --

16 Q. Well, hold on real quick.

17 A. Oh.

18 Q. Was this a statement you gave law enforcement on
19 December 18th, 2003?

20 A. Yes, sir. Yes, sir, it is.

21 Q. And can you identify it with your signature there
22 at the bottom?

23 A. Yes, sir.

24 Q. And did you actually hand-write this statement?

25 A. Yes, sir, I did.

1 Q. Okay. Now, what I want to ask you is, did you, in
2 writing out this handwritten statement that's dated
3 December 18th, 2003, did you indicate on the written
4 statement that she had -- that Carolyn Click had asked Tracy
5 Beatty to leave or that she had told Tracy Beatty to leave?

6 A. Well, she had told -- she had told him to leave
7 because that's -- that's what I remembered.

8 Q. And that's what you wrote on the statement.

9 A. Yes, sir.

10 Q. And that's what the conversation was.

11 A. Yes.

12 Q. And let me show you, I guess, the unhighlighted
13 copy that I've marked State's Exhibit 21. Is this that same
14 document, other than it's the copy that I just showed you?

15 A. Yes, sir.

16 Q. Is this the -- still your same statement
17 indicating by your signature there on the bottom that was
18 given on December 18th, 2003?

19 A. Yes, sir, it is.

20 MR. HARRISON: I tender to Defense State's
21 Exhibit 21.

22 MR. PERKINS: Can we approach?

23 (At the bench, on the record.)

24 MR. PERKINS: If they're planning on offering
25 this, I would have an objection to it.

1 MR. HARRISON: We are planning to offer it,
2 Judge -- oh, I'm sorry. We are planning to offer it, Judge,
3 to rebut the allegation of recent fabrication.

4 MR. PERKINS: All I asked her is why she used
5 the word "asked" instead of "told" before lunch. I didn't
6 compare it to that.

7 THE COURT: Is this the same as she was just
8 reading right now?

9 MR. HARRISON: Yes, Your Honor. That's the
10 same that she had which she was just answering questions on.

11 THE COURT: Okay. So she used this to -- I
12 know you had a marked-up copy on that.

13 MR. HARRISON: Correct.

14 THE COURT: She just testified that in the
15 statement she said she told --

16 MR. HARRISON: That's correct.

17 THE COURT: Okay. Now, you want to put the
18 whole statement in?

19 MR. HARRISON: Yes, sir, to rebut the
20 allegation of recent fabrication based on the questions
21 asked by Mr. Perkins on cross-examination.

22 THE COURT: Okay. Well, she just testified
23 to it. You still want to put it in?

24 MR. HARRISON: Yes, sir.

25 MR. PERKINS: I object to it as improper

1 bolstering of the witness, and it wasn't used to
2 cross-examine her. They can try whatever they want to try.
3 I'm objecting to it.

4 THE COURT: I understand you're objecting to
5 it.

6 Okay. Tell me why -- she just sat up here
7 and testified about what she put in the statement, that --
8 she just testified that --

9 MR. HARRISON: She did. She --

10 THE COURT: What I'm inquiring about is
11 you're offering the statement of the witness, but she just
12 testified to that.

13 MR. HARRISON: Well, just to document the
14 fact that that is what's in the statement. She did testify
15 to that.

16 THE COURT: On -- the statement has got other
17 things -- the statement has a lot of different -- there
18 are other matters in it.

19 MR. HARRISON: I'm sorry?

20 THE COURT: It's got other matters in it
21 besides that.

22 MR. HARRISON: That's the entirety of her
23 statement, that's right.

24 THE COURT: It wasn't used to cross-examine
25 her. You're offering it because it's only to rebut --

1 here's what I'm trying to be clear about. She's testified
2 about what was in the statement, correct?

3 MR. HARRISON: That's correct.

4 THE COURT: And she's testified to what was
5 in the statement. You're still offering it?

6 MR. HARRISON: Yes, sir. Our position was
7 that based on defense counsel's questions, that he was
8 making allegations of recent fabrication, the difference
9 between the written statement versus her testimony. And our
10 position is that we can put in the statement to rebut that
11 allegation of recent fabrication.

12 THE COURT: In addition to what she's
13 testifying is in the statement?

14 MR. HARRISON: Well, I believe we can. I
15 believe we can. But if the Court believes that that would
16 be bolstering, then...

17 THE COURT: Well, I mean, she just testified
18 to what was in the statement.

19 MR. HARRISON: That's right. She did.

20 THE COURT: She just testified -- you just
21 specifically asked her, and that was in the statement where
22 she said -- she's saying that she was -- she came over and
23 told her that she had told Tracy, her son, to leave. I
24 believe you just specifically --

25 MR. HARRISON: I did just ask her about that,

1 yes, sir.

2 THE COURT: So she specifically testified to
3 what was in the statement. So it stands to me, at this
4 point, that she specifically said she gave that statement,
5 and it was in the statement, so then just to offer the
6 statement without any -- she just testified what's in it,
7 and the statement is more than -- how does that rebut the
8 recent fabrication of her testimony?

9 MR. HARRISON: Well, it probably doesn't any
10 more than the testimony itself. It's just a written form
11 rather than testimony.

12 THE COURT: I'm going to sustain the
13 objection because she testified directly out of that
14 statement, that it was in that statement and that that's
15 what was in the statement and that she put in the statement
16 exactly -- that she told him to leave.

17 So I think it would just be bolstering or
18 just putting in the statement when you just had her to
19 testify to, plus some other stuff that's not...

20 (End of bench conference.)

21 THE COURT: All right. Any other questions,
22 Mr. Harrison?

23 MR. HARRISON: Yes, I do have some
24 additional...

25 Q. (By Mr. Harrison) Ms. McCarty, from -- Mr. Perkins

1 was asking you about a prior marriage to a James Everett
2 Click. Did you know James Everett Click?

3 A. No, sir, I did not.

4 Q. Now, you had indicated that during the time of
5 that marriage, you actually were not living next door to
6 Ms. Click?

7 A. No, sir, I wasn't.

8 Q. From the time that the divorce proceedings, I
9 guess, were entered into and during the pendency of that
10 divorce and then after that divorce, would it be fair to say
11 that Ms. Click was living alone during that time?

12 A. Yes, sir.

13 Q. And that would have been from 1997 on into the
14 future -- into the present, from 1997 to 2003?

15 A. '97 -- yes, uh-huh.

16 MR. HARRISON: Judge, may I approach the
17 witness?

18 THE COURT: Yes, you may.

19 Q. (By Mr. Harrison) I'm showing you what I've marked
20 as State's Exhibit Number 20. Do you recognize this as a
21 court document?

22 A. Yes, sir.

23 Q. And, obviously, a divorce decree with James
24 Everett Click and Carolyn Click?

25 A. That's correct.

1 MR. HARRISON: I'd tender to defense counsel
2 State's Exhibit Number 20.

3 MR. PERKINS: Judge, we've seen that
4 previously, and we don't have any objection.

5 THE COURT: State's 20 is admitted with no
6 objection.

7 Q. (By Mr. Harrison) And you can see this has the
8 raised seal from the State of Texas showing that it's a
9 certified document?

10 A. Yes, sir.

11 Q. All right. And you can see also it has a
12 file-mark with the Brad Burger, County Court at Law
13 Number 2?

14 A. Yes, sir.

15 Q. All right. This would be a final decree of
16 divorce between James Everett Click and Carolyn Ruth Click?

17 A. Yes, sir.

18 Q. With regard to -- the part on page 6, it talks
19 about the confirmation of separate property. Do you see
20 that?

21 A. Yes, sir.

22 Q. All right. Is -- in a portion of that first
23 paragraph, under "the confirmation of separate property" in
24 this file-marked divorce decree, refer to the mobile home on
25 Lot 30, Crestview Addition, located at 18853 County Road

1 2323, Whitehouse, Texas, 75791?

2 A. Yes, sir.

3 Q. And that was going to be confirmed as the separate
4 property of Carolyn Ruth Click?

5 A. Yes, sir.

6 Q. All right. Now, Mr. Perkins asked you about
7 seeing the defendant drive any vehicle. You indicated that
8 you saw the defendant drive, on two occasions, a pickup?

9 A. Yes, sir.

10 Q. Do you -- when was that?

11 A. That was after Thanksgiving. As well as I can
12 remember, it was after that.

13 Q. And you indicated you saw him driving it two
14 times?

15 A. Yes, sir, because it was back after he was -- the
16 reason I'm saying when it was, it was after that I didn't
17 see Ms. Click anymore. So it was during that time.

18 Q. All right. You don't know who the truck belonged
19 to?

20 A. No, sir. All I know is -- I don't know his name.
21 He has a mobile home where he buys and sells mobile homes
22 and things like that.

23 Q. And other than those two times, you had never saw
24 the defendant driving even that truck again?

25 A. No, sir.

1 Q. So this truck that you saw the defendant driving
2 two times would have belonged to some man who had something
3 to do with moving mobile homes?

4 A. Yes, sir.

5 Q. Did you ever -- prior to the 25th of November, did
6 you ever see the defendant driving Carolyn Click's station
7 wagon?

8 A. No, sir.

9 Q. Did you ever see Carolyn Click -- prior to
10 November 25th, 2003, Carolyn Click allowing the defendant to
11 drive, with or without her, in her station wagon?

12 A. No, sir.

13 Q. The times that you saw Carolyn Click and the
14 defendant together in the -- in her station wagon, did you
15 ever at any time see the defendant driving that car?

16 A. No, sir.

17 Q. I had asked you about the written statement that
18 you gave where you had, in your own handwriting, written
19 that Carolyn Click had told Tracy, her son, to leave, right?

20 A. Yes, sir.

21 Q. Was there any question in your mind at all that
22 that's what happened, that she told you that she had told
23 him to leave?

24 MR. PERKINS: Objection. It calls for
25 speculation, plus it's a comment on hearsay. Not only are

1 they asking her a hearsay question, but now they're asking
2 her to tender as -- her belief as to the truthfulness of the
3 hearsay statement.

4 MR. HARRISON: Judge, my question is, was
5 there any question in her mind that that was told by the
6 victim.

7 THE COURT: I'll overrule the objection to
8 that question, "Was there any question in your mind about
9 what you were told?"

10 A. Was there any question in my mind about what she
11 told me?

12 Q. (By Mr. Harrison) Yes, ma'am.

13 A. No, sir.

14 Q. From Thanksgiving and -- from Thanksgiving on
15 through and into December, did you see Tracy Beatty go in
16 and out Carolyn Click's residence?

17 A. Yes, sir.

18 Q. On few or many occasions?

19 A. Well, you'll have to understand I wasn't at home
20 all the time.

21 Q. Sure.

22 A. But I saw him on several occasions over there
23 going in and out, yes, and we talked.

24 Q. All right. Now, you had indicated that the first
25 time you actually saw Tracy Beatty drive Carolyn Click's car

1 would have been on what date?

2 A. The weekend, Saturday --

3 Q. Saturday after Thanksgiving?

4 A. Yeah, after Thanksgiving.

5 Q. Do you know -- first of all, where do you work?

6 A. I work at Foley's.

7 Q. What are your hours?

8 A. I work for a fragrance vendor. I have different
9 hours. And that being Christmas, I was working eight to
10 nine hours a day, which would be --

11 Q. Do you recall --

12 A. -- get off maybe at 7:00 and maybe went in at
13 10:00 or 11:00.

14 Q. Okay. I'm sorry. Get off at approximately
15 7:00 p.m.?

16 A. 7:00, yes.

17 Q. And then in December around Christmas-time, would
18 it be light or dark out?

19 A. It would be dark.

20 Q. From the -- do you recall seeing, for the first
21 time, Tracy Beatty driving Carolyn Click's station wagon on
22 the Saturday after Thanksgiving?

23 A. All I can remember is the weekend. I'm sorry. I
24 think it was Saturday, but it was the weekend. He was gone
25 in it.

1 Q. Do you know whether Tracy Beatty drove prior to
2 that, before that?

3 A. Before the weekend?

4 Q. Yes, ma'am.

5 A. In between the 25th and that?

6 Q. In other words, that's the first time you actually
7 saw him driving?

8 A. Yes, sir.

9 Q. Do you know whether he drove at any time before
10 that?

11 A. No, sir, I do not.

12 Q. And obviously, you can't say whether he did or
13 not. The first time you saw him driving, though, would have
14 been the Saturday?

15 A. The weekend, yes, sir.

16 Q. Do you recall, did you work that week, the week of
17 Thanksgiving week?

18 A. Yes, sir, all but Thanksgiving day.

19 Q. All right. So you would have been at work from
20 sometime in the morning, 9:00, 10:00 o'clock in the morning
21 until 7:00 p.m. at night?

22 A. That's correct.

23 Q. Let me ask you this, Ms. McCarty: Did you ever
24 have any occasion to see anyone else besides Carolyn Click
25 drive her station wagon?

1 A. No, sir.

2 Q. So the only person you have ever seen -- prior to
3 November 25th, 2003, the only person you've ever seen drive
4 her station wagon was Carolyn Click?

5 A. Yes, sir.

6 Q I want to ask you a question about something
7 Mr. Perkins talked with you about on cross-examination. He
8 asked you if you had talked over the lunch break or any time
9 after, I guess, we recessed to any of the three of us about
10 your testimony. You said you had not talked to us about
11 your testimony.

12 A That's correct.

13 Q Was there a time that Mr. Perkins approached you
14 and talked with you over the lunch break?

15 A Yes.

16 Q Did you tell Mr. Bingham that Mr. Perkins had
17 approached you and asked you a specific question?

18 A Yes, sir.

19 Q Did you do that over the lunch break?

20 A Yes, sir.

21 Q Did you talk about testimony at all or simply
22 inform Mr. Bingham that Mr. Perkins had asked you a
23 question?

24 A If Mr. Bingham asked me any question?

25 Q No. Did you talk about your prior testimony?

1 A No, sir.

2 Q Or did you simply inform Mr. Bingham that
3 Mr. Perkins had approached you and asked you a question?

4 A I told him that they had approached me.

5 MR. HARRISON: May I approach the witness,
6 Your Honor?

7 THE COURT: Yes.

8 Q (By Mr. Harrison) Ms. McCarty, let me show you
9 what I've marked State's Exhibit No. 3.

10 A Yes, sir.

11 Q Can you identify anything about the person in
12 State's Exhibit No. 3?

13 A I recognize the ring was Ms. Click's.

14 MR. HARRISON: Tendering to defense counsel
15 State's Exhibit No. 3. And we're going to offer State's
16 Exhibit No. 3.

17 MR. PERKINS: May we approach?

18 THE COURT: Yes.

19 MR. PERKINS: And there's going to be several
20 things, Judge, so it may be better that we take these it up
21 outside the presence of the jury, because I'm going to have
22 another proffer as well.

23 MR. HARRISON: In that case, can I do one
24 more before we go outside the presence?

25 THE COURT: Yes.

1 Q (By Mr. Harrison) I'm showing you State's Exhibit
2 No. 18, Ms. McCarty. From anything present here, can you
3 identify this individual?

4 A Yes, sir, the tattoo over the breast.

5 Q Can you identify the person in the photograph?

6 A Yes, sir.

7 Q Who is it?

8 A It's Carolyn Click.

9 Q I don't know if I asked you on State's Exhibit
10 No. 3. Who is the individual in State's Exhibit No. 3?

11 A Carolyn Click.

12 THE COURT: All right. Ladies and Gentlemen,
13 I'm going to have to excuse you for about 15 minutes.
14 Mr. Carleton will be right back to get you.

15 All rise for the jury.

16 (The jury leaves the courtroom.)

17 (Open court, defendant present, no jury.)

18 THE COURT: All right. The jury is now out
19 of the courtroom. The Defense is still present; the
20 defendant is present. The State's present; the Defense is
21 present; the defendant is present.

22 Outside the hearing of the jury.

23 MR. HARRISON: Judge, I think we had offered
24 State's Exhibit No. 3 and 18. These are photographs that
25 the Court saw. I think the photographs --

1 THE COURT: Hold your left one up a little
2 bit further, I think, what you're referring to.

3 MR. HARRISON: (Complies.)

4 THE COURT: Okay. All right. What numbers;
5 3 and what?

6 MR. HARRISON: 3 and 18.

7 THE COURT: All right. Go ahead.

8 MR. PERKINS: The defendant objects to both
9 State's Exhibit 3. First of all, for the following reasons,
10 State's Exhibit No. 3 is -- I don't know -- I would say a
11 hundred times life size would be my guess. It's a picture
12 of a ring. The witness on the stand indicates that she
13 could identify the ring as belonging to Carolyn Click.

14 If they want to excise the portion regarding
15 the ring, we have no objection to that. There is no other
16 reason to put that into evidence other than to prejudice the
17 defendant.

18 As far as State's Exhibit No. 18, again, she
19 says she can identify the person in that photograph by
20 the -- I believe she testified the tattoo over the breast.
21 Again, if they want to excise this particular portion from
22 that picture, which I'll tell the Court, is poster-board
23 size, for the record. Probably a poster board, full frontal
24 nudity picture of the deceased in the case.

25 If they want to excise the portion regarding

1 the tattoo, which allows her to identify the alleged victim
2 in the case, then we would have no objection.

3 Again, there is no reason, and it is
4 uncontroverted by the Defense that the defendant in the case
5 killed Carolyn Click. There's no controversy about that.
6 There's no need for the State to proffer these, except to
7 try to inflame the jury against the defendant and cause, by
8 prejudicial effect, an adverse verdict to the defendant.

9 So since there is no contest regarding the
10 identity of the person who was killed or the identity of the
11 person who did the killing, then this is wholly unnecessary.

12 Our objection is that these photographs are
13 irrelevant, prejudicial, and are way out of proportion under
14 a balancing test, under 403, that any relevant purpose that
15 these may serve would be greatly outweighed by showing
16 decomposing -- photos of decomposing bodies to a jury when
17 it's absolutely for the purposes proffered by the State,
18 unnecessary.

19 THE COURT: With this witness, the lay
20 witness on the stand now, what would be the purpose with
21 this witness, the lay witness whose testimony, as the Court
22 understands it, is an identification of the ring on a
23 finger? What would be the purpose of the offer of the State
24 on up through the measuring device and further on up with
25 this lay witness?

1 MR. HARRISON: Judge, the only witnesses who
2 can identify the body are actually lay witnesses. The
3 purpose of having it with the measuring device is that ties
4 it to the pathologist, who conducted the autopsy, who will
5 testify to the injuries suffered by this person named
6 Carolyn Click, who can only be identified Carolyn Click, the
7 son of -- pardon me -- the mother of Tracy Beatty through
8 lay witnesses.

9 The identity, although not contested, I
10 guess -- Mr. Perkins says it's uncontroverted. It's still
11 an element that we have to prove.

12 THE COURT: Well, what are you saying about
13 the pathologist's testimony would be in regard to State's 3?

14 MR. BINGHAM: Can I have one second?

15 THE COURT: Sure.

16 MR. HARRISON: Judge, this measuring device
17 with the numbers that are on it is the pathologist's way to
18 identify through case numbers, the pathologist's case
19 number, the autopsy number. The fact that this ring is
20 identified by a lay witness as belonging to Carolyn Click
21 ties this ring to this person that the autopsy was performed
22 on.

23 THE COURT: I understand that. My question
24 is in regard to 3, as it goes on up. In other words, as it
25 goes on up above the measuring device -- I think my question

1 is, do you need the measuring device?

2 Go ahead -- I mean, I'm talking about with
3 this lay witness. So if the pathologist, who was there when
4 the picture was taken, if there's something with regard to
5 the measuring device and on up above the measuring device
6 that a pathologist is going to testify to, that would be
7 another question.

8 With this lay witness, her testimony seems to
9 go to being able to identify that watch. So I guess my
10 question is, up through the measuring device on up, what is
11 a necessity with this witness?

12 MR. HARRISON: Judge, we can take from above
13 the measuring device.

14 MR. PERKINS: I don't see why the State needs
15 any of this. As you look at it, to the left of it, and
16 below the measuring device.

17 THE COURT: Hold it up. Just a second,
18 Mr. Perkins. I can't see it down there. Hold it up.

19 MR. PERKINS: And, Judge, if they want to
20 excise the portion out of here that has the ring and the
21 measuring device, then I have no objection to it. But to
22 put in all that other stuff is --

23 THE COURT: Well, if they excise out -- and I
24 don't know where -- apparently, you need to use this again.
25 And I suppose at this point, it would be a matter of to --

1 when you say "excise," to cover sufficiently from the
2 measuring device up?

3 MR. HARRISON: Just above the measuring
4 device?

5 THE COURT: What is the purpose of the
6 measuring device with this lay witness?

7 MR. HARRISON: It's not necessarily -- the
8 case number is not relevant to this particular lay witness.
9 What's relevant is that this case number goes to this body
10 upon which a ring was on the finger that was then
11 identified -- the ring being identified as that belonging to
12 the victim through this lay witness.

13 THE COURT: All right. Then in regard to --

14 MR. PERKINS: Well, Judge, here's the thing.
15 They have another witness that can come in and say,
16 "Identify this ring by this picture."

17 What they're trying to do is try to put as
18 much of that dead, rotted hand in as they can so they can
19 get the jury good and fired up against Tracy Beatty. Let's
20 just get to the facts here.

21 MR. HARRISON: The fact that this is Carolyn
22 Beatty's (sic) ring proves nothing -- Carolyn Click's ring
23 does nothing to show that this person is Carolyn Click. The
24 only fact that this is relevant is that this is Carolyn
25 Click's ring and that it is on her body. Otherwise, this

1 ring could have come out of the jewelry --

2 THE COURT: I understand that.

3 MR. BINGHAM: -- box. The fact of the matter
4 is that this is going to be relevant, this picture to the
5 pathologist, obviously, because of the decomposition is
6 dated.

7 The point of it is, if there's some part of
8 this that Mr. Perkins and the Court order us to remove,
9 that's fine. The part of what's relevant to the jury
10 through this witness is that this ring that she can identify
11 is on Carolyn Click's body.

12 THE COURT: Well, are you saying that you
13 need the -- you're saying that that's why you need the
14 number?

15 MR. BINGHAM: Right. Judge, all of this
16 might be irrelevant, but the fact that this ring is on her
17 body, and this ring belongs to Carolyn Click.

18 THE COURT: What about the area that
19 Mr. Perkins is objecting to over to the left underneath the
20 measuring device?

21 When we say "excise," I think we're really
22 talking in terms of sufficiently covering up. That's
23 probably, I take it, the only photograph like that you've
24 got?

25 MR. BINGHAM: Judge, we can blow them up.

1 THE COURT: Okay. In regard to that State's
2 Exhibit 3, then, from --

3 MR. BINGHAM: You're talking about right here
4 (indicating)?

5 THE COURT: Right there up.

6 MR. BINGHAM: So we just take --

7 THE COURT: You're going to leave the number,
8 correct? There you go. It's basically, you're excising
9 from the number and the ruler up, and then --

10 MR. BINGHAM: Right. We're excising from the
11 ruler all the way up in the photograph and then from the 4
12 over to the edge.

13 THE COURT: All right. And then this ruling
14 obviously is with this witness. We don't have to hear
15 another witness' testimony. If that same photograph is
16 reoffered with another witness.

17 All right. Then that's State's Exhibit No. 3
18 is -- now you're offering State's Exhibit 3?

19 MR. PERKINS: Cut off your sticker.

20 THE COURT: Get the sticker on there.

21 MR. HARRISON: We have redacted and cut by
22 Mr. Bingham, we would reoffer State's Exhibit No. 3.

23 THE COURT: With regard to State's Exhibit 3,
24 as redacted, Mr. Perkins, do you have any objection? I
25 believe those are basically the areas, as I was

1 understanding your objection.

2 Do you have some tape down there?

3 MR. PERKINS: We don't have any additional
4 objections, Your Honor.

5 THE COURT: The Court's ruling, the Court has
6 made clear, the redactions that have been made, and the
7 Court's ruling thereto goes to this witness' identification
8 of the ring.

9 If there is a subsequent witness that the
10 full photograph is offered with, the Court will have to rule
11 on that, once the Court determines what the witness'
12 testimony would be in reference to the full photograph.
13 Which is the other one? The full photograph is State's 3.

14 MR. HARRISON: State's Exhibit 18.

15 THE COURT: Now, in regard to State's
16 Exhibit 18, if I understood the witness' testimony, she
17 referenced a tattoo; is that correct, which is what you're
18 pointing to?

19 MR. HARRISON: That's correct.

20 THE COURT: And also she identified this as
21 the victim, Carolyn Click?

22 MR. HARRISON: Correct.

23 THE COURT: If that testimony is based on --
24 which -- I mean, obviously, it would be from the tattoo and
25 the face of Carolyn Click, that would -- then with this

1 witness, what would be the need for going down below the
2 tattoo area with this witness?

3 MR. BINGHAM: Judge, so you're asking us from
4 the tattoo below?

5 THE COURT: Yes, sir.

6 MR. BINGHAM: From the tattoo below, with
7 this witness, we have no objection to removing from the
8 tattoo down, except from the No. 1.

9 THE COURT: Well, all right. With the
10 number -- your identification number can stay. Your
11 identification number -- now, I'm talking about with this
12 witness, your identification number can remain. But in
13 terms of -- I think that's your objection, isn't it,
14 Mr. Perkins?

15 MR. PERKINS: Well, Judge, my objection is,
16 is this: This witness did not testify that she recognized
17 her from her face and the tattoo. This witness testified
18 that she recognized her from the tattoo. So there's no
19 reason to show the face. So my objection is to show
20 anything other than the tattoo.

21 THE COURT: No. She said she could
22 recognize -- my recollection of the testimony is she said
23 she could recognize that as Carolyn Click.

24 MR. PERKINS: That's not my recollection of
25 it. But we object to it, in any event, Judge. If she says

1 she can recognize her from her face, then she's subject to
2 cross-examine on that.

3 THE COURT: That's right. Mr. Perkins, what
4 I believe her testimony was, was that she could recognize
5 the person in there as Carolyn Click.

6 MR. PERKINS: Because of the tattoo, is
7 exactly what she said, Judge. We could have the court
8 reporter read it back. She said, because of the tattoo over
9 the breast, she could recognize her. We could argue about
10 it, but it's in the record that she identified her from the
11 tattoo.

12 If they want a picture of the tattoo in, I
13 have no objection. But if they want to put in a full,
14 frontal, nudity picture of a corpse, then --

15 THE COURT: Mr. Perkins, in regard to your
16 objection and the Court's ruling, I'm going to allow the
17 photograph, including the face, to come in that the State
18 excised down below the tattoo, and they can leave their
19 identification number in.

20 MR. PERKINS: I have the same objections,
21 Judge.

22 THE COURT: They're overruled with them
23 making the excisions, with them excising the parts they're
24 excising now.

25 On what State's exhibit is that,

1 Mr. Harrison?

2 MR. HARRISON: Exhibit 18.

3 THE COURT: 18. On State's Exhibit 18.

4 So State's 3 is excised. The objection is
5 overruled, and State's 3, as it stands now, after having
6 portions having been excised, and in regard to State's
7 Exhibit 18 -- hold that up a little higher.

8 In State's Exhibit 18, do you have any
9 further objections to it, Mr. Perkins?

10 MR. PERKINS: No, Your Honor. I've made all
11 the objections I'm going to do to that.

12 THE COURT: Okay. State's Exhibit 18, as it
13 is now excised, the objection is overruled and it will be
14 admissible.

15 So State's 3 and 18, the Court will admit as
16 excised.

17 Did you have anything else?

18 MR. PERKINS: I did, Judge. Since the jury
19 is not present in the courtroom, I did want to go ahead and
20 make a proffer of the question, especially in light of the
21 State's redirect of this witness, regarding Ms. Click's
22 previous suicide attempt. I figured now is as good a time
23 to take that up outside the presence of the jury.

24 THE COURT: Outside -- and the record will
25 continue to reflect we're outside the presence of the jury.

1 MR. PERKINS: May I proceed with that, Your
2 Honor?

3 THE COURT: Yes, you may.

4 VOIR DIRE EXAMINATION

5 BY MR. PERKINS:

6 Q Ms. McCarty, we had an opportunity right after
7 1:00 today to visit just for a second, because when you had
8 talked about having confided or having had Ms. Click confide
9 in you, I asked you if you had any knowledge regarding a
10 prior suicide attempt.

11 A Yes, sir.

12 Q You remember us talking about that out in the
13 hall?

14 A Yes, sir.

15 Q And you told me at that time that she did?

16 A Yes, sir.

17 Q That you were aware that Carolyn had at some point
18 in the past shot herself; is that right?

19 A She had told me that, yes, sir.

20 Q Do you know when it was that she told you that?

21 A Oh, it's been five or six years ago at least.

22 Q What did she tell you about that, ma'am?

23 A She just told me that she was young, and I don't
24 know if she had told me about the details and everything.
25 She did try to kill herself and that she tried to shoot

1 herself -- I mean, she shot herself.

2 Q So she did shoot herself and try to kill herself?

3 A Yes, sir.

4 Q Did she tell you anything about what led up to it,
5 what had caused her to get to that particular point in her
6 life?

7 A No. She just said that I was just upset, and she
8 didn't go into detail of what anything was about. But I
9 don't know if it was a boyfriend or whatever, but she didn't
10 say anything about what it was. She just told me what she
11 had done and opened that up to me, and that was it.

12 Q But you don't recall as to what it was that caused
13 her to shoot herself?

14 A No, sir.

15 Q And do you recall whether or not those events had
16 anything to do with Tracy Beatty?

17 A Not that I'm aware of.

18 Q So you don't know if it did or don't know if it
19 didn't?

20 A No, sir.

21 Q Do you know how old she was at the time that she
22 tried to commit suicide by shooting herself?

23 A No, sir. No, sir, I don't know how old she was.

24 Q And she told you this, you say, approximately five
25 years ago. This would have been around 1999 that she told

1 you this, give or take?

2 A Give or take, because we had known one another for
3 a while where we got to talking, opening up to one another.
4 But somewhere along in there.

5 MR. PERKINS: Judge, it's my opinion that,
6 especially in light of the State's questions regarding what
7 they had specific questions, what we had asked you about,
8 that kind of thing, we visited with you after the lunch
9 hour, that kind of thing that the State addressed in their
10 redirect.

11 THE COURT: Yes, I know what you're referring
12 to in terms of the testimony.

13 MR. PERKINS: Right.

14 My area of inquiry was regarding her changing
15 from "had asked him to leave" to "telling him to leave."
16 However, the State, then, opened the door to us being able
17 to ask what did you visit with the State about. Because as
18 it stands in front of the jury right now, it looks as though
19 it's something that could possibly be improper for us to
20 visit with her or for the State to visit with her.

21 The State has left an impression with the
22 jury, basically, that that leaves them to wonder. And it's
23 our opinion, Judge, that since Ms. McCarty has been able to
24 come in and talk about confidences that were expressed to
25 her by Ms. Click regarding undated, untimed assaults by

1 Tracy Beatty, I don't know when, just at some time in the
2 past he has assaulted her, that we are entitled for the jury
3 to know and to understand all of the details which were
4 confided to this witness by Ms. Click, including her prior
5 suicide attempt, for whatever relevancy it may have, for
6 whatever weight and value.

7 We don't believe it's inadmissible. We
8 believe that the jury ought to be able to determine what
9 weight or relevance to give to that, if any. So as it's
10 left right now, the State has gone right up to the thing,
11 and I don't know why -- what would prevent me to ask her,
12 since it's been asked in front of the jury, what did you
13 visit with the State about, what did you talk to Mr. Bingham
14 about. I don't see what would prevent me from doing that.

15 THE COURT: Mr. Harrison?

16 MR. HARRISON: Judge, as I understand it,
17 what was just said and my recollection is that Mr. Perkins
18 on cross-examination is the first person ever to ask this
19 witness if she visited with the State over the lunch hour.
20 And that was done on cross-examination. We had asked
21 nothing -- I mean, obviously, we couldn't have asked
22 anything about that because we hadn't had a lunch break when
23 I passed the witness.

24 Mr. Perkins, on cross-examination, asked did
25 she visit with any of the three of us. So my question in

1 response to that, in direct response to direct examination
2 was, did we visit with you about testimony, or did you
3 simply alert us to the fact that Mr. Perkins had come and
4 asked you a specific question.

5 There wasn't -- we -- I didn't preface
6 anything about what the question was in front of the jury.
7 I simply was responding to the question that was asked of
8 this witness on cross-examination by Mr. Perkins to let the
9 jury know that we hadn't talked about testimony, which was
10 the implication from the question on cross-examination.

11 That doesn't open the door to anything. As
12 far as why we're entitled to get into -- the Court's already
13 ruled that the statements by the victim to this witness
14 about Tracy Beatty specifically referring to the
15 relationship and the prior relationship between the victim
16 and Mr. Beatty is admissible on several grounds, not the
17 least of which is Article 38.36 of the Texas Code of
18 Criminal Procedure.

19 The information related to the victim to this
20 witness has nothing at all to do with Tracy Beatty. There's
21 no evidence that it has anything to do with Tracy Beatty.
22 It's not related to any relationship between Tracy Beatty
23 and the victim. It's not relevant. There's nothing
24 probative about it. Doesn't go to any issue in this case.
25 It doesn't go to any past or any past relationship between

1 the parties.

2 THE COURT: Is that it?

3 MR. HARRISON: That's the extent of it.

4 THE COURT: All right. The Court's going to
5 sustain the objection. I believe you earlier made an
6 objection, Mr. Harrison, to the question when it was
7 first -- y'all first approached the bench.

8 MR. HARRISON: I asked for a motion in
9 limine, Judge.

10 THE COURT: Yes, a motion limine. Well, the
11 Court's going to sustain.

12 MR. HARRISON: And I'll object to the
13 question.

14 THE COURT: The Court is going to sustain the
15 objection. The Court is going to grant your motion in
16 limine.

17 And at this time, Mr. Perkins, the motion in
18 limine is granted not to ask the witness about anything that
19 she was told in reference to some attempted suicide at some
20 earlier time by Carolyn Click. And I sustained -- I'm
21 sorry.

22 MR. PERKINS: I do have one other matter I'd
23 like to bring to the Court's attention. I understand the
24 Court's ruling. There's one other area which has not quite
25 been breached yet by the Defense.

1 We feel like it may be probative. I don't
2 see how the State can stand up here and say it has nothing
3 to do with Tracy Beatty when their witness says it may or
4 may not, I don't know.

5 But I don't see how the State can stand up
6 here and say it's totally irrelevant, when the witness on
7 the stand says, "I don't know if it had anything to do with
8 him or not."

9 What I will say is this: Their previous
10 witness indicated that Tracy Beatty had told him that
11 Carolyn Click had pulled a gun on him and that it was
12 necessary for him to take the gun away and choked her while
13 taking the gun away.

14 We believe that it's relevant on the issue of
15 Carolyn Click's propensity, if you will, to produce a gun
16 and to use a gun, either against herself or to other people.
17 So the relevancy of the fact that she would shoot herself,
18 I'll make an argument like I know the Court made in Kerry
19 Max Cook's case. If you'll take a razor blade and saw the
20 end off of your own penis, it probably would be a less
21 intrusive thing to take a pair of scissors and cut
22 somebody's labia off.

23 So let me make this particular argument to
24 the Court: If Carolyn Click was willing at one point in
25 time to produce a gun and shoot herself in the spine, I

1 would say that at some subsequent point in time it may add
2 credibility to the defendant's version that he had to take
3 the gun away from her to defend himself in self-defense to
4 strangle her.

5 So on that basis, I would tell the Court that
6 we believe that it's relevant and probative on the issue of
7 a possible self-defense claim, which has already been
8 produced into evidence by the State's first witness. So,
9 again, we believe that it's relevant and probative on that
10 issue.

11 THE COURT: The Court is going to grant the
12 motion in limine and sustain the objection for defense
13 counsel not to ask the witness anything relative to what she
14 was told by Carolyn Click, reference an attempted suicide by
15 Carolyn Click at some time earlier in her life. That's the
16 Court's ruling. As the record stands at this time, the
17 Court's ruling it's not relevant.

18 Now, if at some time in the -- in some future
19 testimony, if you will raise it, the Court will take it back
20 up in terms of whether or not it becomes relevant.

21 MR. PERKINS: That's fine, Judge. I
22 understand the Court's ruling. Will the Court allow me to
23 offer my questions to her and her responses on a bill of
24 exception at this time? Obviously, if it becomes relevant,
25 we're going to obviously offer that in the form of testimony

1 again. But at least at this point in time, to offer that on
2 a bill of exception?

3 THE COURT: Well, I think that's what -- you
4 just made a bill. Didn't you just make a bill on it?

5 MR. PERKINS: That's what I'm offering it now
6 on a bill of exception.

7 THE COURT: On a bill of exception outside
8 the presence of the jury.

9 MR. PERKINS: Since the Court -- my
10 understanding is the Court's granted a motion in limine.
11 The Court has not excluded that testimony.

12 THE COURT: As the record stands now, the
13 Court has granted the motion in limine of the State and
14 sustained the State's objection to asking this witness about
15 any matter relative to her being told by Carolyn Click or --
16 and that's the only offer so far about an attempted suicide
17 by Carolyn Click at some earlier point in her life. So
18 that's the Court's ruling at this time.

19 If at some point, the Court doesn't -- the
20 Court finds it's not relevant at this time.

21 Are we ready for the jury, Mr. Perkins? Can
22 I get the jury? Do you have anything further?

23 MR. PERKINS: No, Judge, we're ready.

24 THE COURT: Let's get the jury back in.

25 Do you have anything else, Mr. Harrison?

1 MR. HARRISON: No, Your Honor.

2 THE COURT: Before the jury gets back in,
3 Mr. Perkins, I might say I might have to consult the record
4 before I reference the exact words used in that argument.
5 Maybe you have a better memory than me.

6 (The jury enters the courtroom.)

7 (Open court, defendant and jury present.)

8 THE COURT: Have a seat, please, Ladies and
9 Gentlemen. Thanks.

10 Go ahead, Mr. Harrison.

11 MR. HARRISON: May I continue to approach?

12 THE COURT: Yes.

13 DIRECT EXAMINATION (CONTINUED)

14 BY MR. HARRISON:

15 Q Ms. McCarty, I had previously shown you State's
16 Exhibit No. 18.

17 A Yes, sir.

18 Q And you had -- let me just ask you: Can you
19 identify the individual contained in this photograph,
20 State's Exhibit No. 18?

21 A Yes, sir.

22 Q By what method can you identify this individual?

23 A Well, as I was saying, the tattoo. As I was
24 saying, the tattoo, but across in here (indicating).

25 Q Now, I've seen you make a gesture with your hand

1 kind of under your nose.

2 A The nose area.

3 Q So you can identify the individual in this
4 photograph as Carolyn Click?

5 A Yes, sir.

6 Q Through both tattoo as well as her nose?

7 A Yes.

8 Q Now, looking at State's Exhibit No. 3, can you
9 identify the individual or anything in this photograph?

10 A I can identify the ring.

11 Q Whose ring is that?

12 A Carolyn Click's.

13 MR. HARRISON: We would offer, Judge, State's
14 Exhibit 18 and 3.

15 MR. PERKINS: I have no additional
16 objections, Your Honor.

17 THE COURT: State's Exhibit 3 and 18 are
18 admitted.

19 MR. HARRISON: May we publish, Judge?

20 THE COURT: Yes.

21 Q (By Mr. Harrison) Let me start with State's
22 Exhibit No. 3. Now, you've indicated that you can identify
23 this as Carolyn Click's ring?

24 A Yes, sir.

25 Q And I guess you're obviously referring to this --

1 I guess it's a pinky ring?

2 A Pinky ring.

3 Q Can you tell what hand that is worn on?

4 A I was trying to think back. I believe it was on
5 the right hand.

6 Q Do you know it to be a ring, a pinky ring?

7 A Yes, sir.

8 Q And with regard to State's Exhibit No. 18, you had
9 indicated that you could recognize this body as that of
10 Carolyn Click's?

11 A Yes, sir.

12 Q And you base that both on the nose --

13 A Nose.

14 Q As well as a tattoo over her left breast?

15 A Yes, sir.

16 Q And have you seen this tattoo on Carolyn Click
17 before?

18 A Yes, sir. I couldn't describe it to you, but I
19 had seen it. She pulled her blouse down one time and showed
20 it to me.

21 Q And is this tattoo that's on State's Exhibit
22 No. 18, the tattoo that's on the body of Carolyn Click?

23 A Yes, sir.

24 Q This is going to sound like a silly question, but
25 when she was alive prior to November 25th, 2003, was Carolyn

1 Click an individual, a live human being?

2 A Yes, sir.

3 Q And after November 25th, 2003, did you ever see or
4 speak to Carolyn Click again?

5 A No, sir.

6 Q Thank you, Ms. McCarty.

7 MR. HARRISON: I'll pass the witness.

8 THE COURT: Mr. Perkins.

9 MR. PERKINS: Thank you, Judge.

10 CROSS-EXAMINATION

11 BY MR. PERKINS:

12 Q Ms. McCarty, I promise I'll try to get you out of
13 here as quick as I can. I appreciate your patience with us.

14 Do you know who Donna Wilcox is?

15 A Donna Wilcox?

16 Q Yes, ma'am.

17 A No, sir.

18 Q Did the truck that you saw Tracy Beatty driving,
19 had you ever seen that truck before?

20 A It was parked behind -- I believe it was the one
21 that was parked behind that vacant mobile home next to ours.

22 Q Down in the lot next to where -- I think you
23 described is a place where they were going to make it into a
24 craft place?

25 A Yes, sir.

1 Q Do you know who owned that truck?

2 A The gentleman that has the lots out there.

3 Q Okay.

4 A That is his property there. They were going to
5 put a little hobby shop in it or something.

6 Q Yes, ma'am. Did you ever talk to Lieanna
7 Wilkerson about seeing the defendant, Tracy Beatty, driving?

8 MR. HARRISON: Judge, I'm going to object.
9 That's going to call for hearsay.

10 MR. PERKINS: If I asked her if she talked to
11 somebody?

12 MR. HARRISON: Asking about the content what,
13 if anything, was discussed.

14 THE COURT: He hasn't asked that yet. All
15 he's asked is, did you talk to Lieanna. He can ask her did
16 you talk to the person, Lieanna. Overruled as far as the
17 question, did she talk to someone.

18 Q (By Mr. Perkins) Did you ever talk to Lieanna
19 Wilkerson about seeing Tracy Beatty driving?

20 A No, sir.

21 Q Did you know -- maybe you do or maybe you don't --
22 do you know whether or not Tracy Beatty had a driver's
23 license or when he got a driver's license?

24 A They did tell me he had gotten a --

25 MR. HARRISON: Judge, I'm going to object to

1 hearsay.

2 THE COURT: I'll sustain the objection.

3 Q (By Mr. Perkins) Don't tell me what they told
4 you. Who told you that he got a license?

5 MR. HARRISON: Judge --

6 THE COURT: I'll sustain the objection. It
7 will be hearsay.

8 Q (By Mr. Perkins) Let me ask it a different way.
9 Did Carolyn Click ever talk to you about the defendant or
10 the defendant having a driver's license?

11 A No, sir.

12 Q Okay. Did somebody else talk to you about it?

13 MR. HARRISON: Judge, I would object. This
14 is all -- the question has hearsay in it.

15 THE COURT: I'll sustain the objection.

16 Q (By Mr. Perkins) You say you had known Callie, as
17 you referred to her, over a period of 10 to 11 years,
18 something like that?

19 A Yes, sir.

20 Q You visited in her home?

21 A Yes, sir.

22 Q Do you know whether or not she had any firearms in
23 her home?

24 A No, sir, I do not know that.

25 Q Did you ever have any conversation with her where

1 she indicated that she owned or at any time previously
2 possessed a firearm?

3 A No, sir.

4 Q So let me make sure that you understand what I'm
5 asking. Is it your testimony today that you have no
6 information that Carolyn Click ever possessed a firearm?

7 MR. HARRISON: Judge, I would object. May we
8 approach?

9 THE COURT: Yes.

10 (At the bench, on the record.)

11 MR. HARRISON: Judge, this is directly in
12 violation of the motion in limine.

13 MR. PERKINS: No, it's not.

14 MR. HARRISON: This is --

15 MR. PERKINS: That motion in limine doesn't
16 cover her possessing a firearm.

17 MR. HARRISON: Well --

18 THE COURT: Okay. Now, I wanted to make
19 clear to this witness -- and if we have to go back outside
20 the presence -- where you're asking about, did you ever have
21 any knowledge that she was in possession of --

22 MR. PERKINS: That's all I'm going to ask
23 her.

24 MR. HARRISON: No, no, no.

25 THE COURT: And here's why. Here's why.

1 Because I think it would reasonably link to a response that
2 the Court has already determined is not admissible or
3 relevant.

4 MR. PERKINS: I'm just going to ask her yes
5 or no. That's all.

6 THE COURT: I want the witness to understand
7 the Court's ruling in reference to the motion in limine,
8 because that question you're asking, though it might call
9 for a yes or no answer, could result in a response.

10 MR. PERKINS: I'll rephrase the question.

11 THE COURT: If she doesn't understand the
12 motion in limine --

13 MR. PERKINS: I'll rephrase the question.

14 THE COURT: -- you can see where that can
15 easily go.

16 MR. PERKINS: I'll rephrase the question.

17 MR. HARRISON: Judge, I want to be able to
18 make sure the witness understands what she can answer
19 because I think, as I recall, she was in here when the Court
20 granted our motion, and I just want to make sure she
21 understands what she can answer because --

22 MR. PERKINS: He can go up there and talk to
23 her. I don't care.

24 THE COURT: Well, I just want to be sure. I
25 just want to make sure because that question -- I'm not

1 saying that that's what you intend, it's just that that
2 could elicit that response. I'm going to get Mr. Harrison
3 to talk to her.

4 MR. PERKINS: That's fine, if you want to go
5 talk to her.

6 MR. HARRISON: Does that mean that the fact
7 that she had received information about this shooting, this
8 suicide attempt -- I guess from that, that she would have to
9 say yes, she has information?

10 MR. PERKINS: That's as far as I'm going with
11 it.

12 THE COURT: That's the problem with that.

13 MR. HARRISON: Because she's already been
14 instructed that there's a motion in limine about testimony
15 related to that.

16 THE COURT: Are you objecting to -- if she --
17 if it's made plain to the witness what the motion in limine
18 is...

19 MR. HARRISON: Well, yes. My objection is
20 still that that would constitute hearsay still because it
21 doesn't specifically relate to the victim and the
22 defendant's prior relationship. That's why it is admissible
23 for us to ask those questions.

24 We've asked about prior assaults and that
25 type of thing. This question would be based on hearsay,

1 because it would be something that the victim had related to
2 her, that she had a gun and tried to commit suicide.

3 That has no relevance or relationship between
4 the parties; therefore, it's simply hearsay, and it's not
5 relevant.

6 MR. PERKINS: I think the fact that alleged
7 the victim -- or at least according to one version from the
8 defendant, which has already been proffered -- had a gun at
9 the time that she was disarmed and killed. The fact that
10 the alleged victim had it at least at some point prior, in
11 possession of a firearm, would be relevant.

12 I don't plan on going any further, and I
13 don't plan on violating the motion in limine, but I think
14 it's a dream world that the State's living in to think that
15 that's not relevant for any purposes.

16 MR. HARRISON: It's still hearsay. It's
17 still hearsay because it's not going towards the
18 relationship between the victim and the defendant.

19 MR. PERKINS: How do you know?

20 MR. HARRISON: There's no testimony that she
21 can offer that it had anything at all to do with any
22 relationship or anything to do with Tracy Beatty. So unless
23 I --

24 MR. PERKINS: Do I have to depend on this
25 witness to prove up every fact of everything? The answer is

1 no, I do not.

2 THE COURT: Here's -- the question has got to
3 be made clear with this witness what the motion in limine is
4 and what she can respond to.

5 MR. PERKINS: That's fine. I'll go up there
6 and talk to her.

7 THE COURT: If you are asking her, has she
8 ever -- do you have any information -- has she ever been
9 told that the victim owned a firearm, because we don't --
10 she can answer that question, and if she can answer that
11 yes, then I'll let her answer that question yes. But be
12 sure she understands.

13 MR. PERKINS: I'll just go talk to her.

14 (End of bench conference.)

15 MR. PERKINS: May I proceed, Your Honor?

16 THE COURT: Yes, sir.

17 Q (By Mr. Perkins) Ms. McCarty, I'll try to
18 remember my question, if I can.

19 My question to you is, do you have -- just
20 yes or no, do you have any information that Carolyn Click
21 was ever in possession of a firearm?

22 A No, sir, I don't.

23 Q That's your answer today?

24 A If I was aware of her having possession of a
25 firearm? I was not aware if she had one.

1 Q Let me make sure that you understand what I'm
2 asking. Did Carolyn Click tell you -- again, yes or no --
3 did Carolyn Click tell you that she was in possession of a
4 firearm at any time prior to her disappearing in November of
5 2003?

6 A No, sir.

7 MR. PERKINS: Judge, I --

8 THE COURT: Counsel, approach the bench.

9 (At the bench, on the record.)

10 MR. PERKINS: I think that she set herself up
11 for impeachment, Judge. What am I supposed do here?

12 MR. HARRISON: I think she's relating it to
13 this time in November.

14 THE COURT: She is. She doesn't understand.

15 MR. HARRISON: Judge, you know what? Just
16 let him ask the question.

17 MR. BINGHAM: I mean, is the question -- is
18 the question that you want to ask is, did she ever try to
19 commit suicide?

20 (Counsel confer.)

21 THE COURT: She --

22 MR. PERKINS: All I want her to say is yes.
23 That's all I want her to say.

24 THE COURT: She is relating this question to
25 whether or not she had any information that Carolyn Click

1 had a firearm sometime leading up to when she disappeared.

2 MR. PERKINS: I don't doubt that at all.

3 THE COURT: She is not understanding what
4 you're asking her.

5 MR. PERKINS: I'll try to ask it a different
6 way.

7 THE COURT: Let's just see if we can get this
8 hammered out.

9 (End of bench conference.)

10 Q (By Mr. Perkins) I want to make sure you
11 understand my question. The question -- I'm not asking you
12 the circumstances surrounding it. I'm not asking you to say
13 anything other than yes or no.

14 Did Carolyn Click ever talk to you about
15 being in possession at any time prior to November of 2003?
16 Did she ever have a conversation with you where she
17 indicated that she had ever held in her hand a firearm?

18 A No, sir. I'm sorry. I can't say that.

19 THE COURT: Just a second, ma'am. Don't
20 answer any other question that you're not asked or don't
21 volunteer anything. I'm sorry.

22 MR. PERKINS: I think we need to approach
23 again, Judge. I'm sorry.

24 MR. HARRISON: Mr. Harrison, one of y'all
25 come up here.

1 (At the bench, on the record.)

2 MR. PERKINS: I think the only thing that I
3 can do now is ask her, is -- have you --

4 MR. HARRISON: Shhh. They can hear
5 everything that's been said up here back there.

6 THE COURT: Well, there's nothing I can do
7 about that.

8 MR. PERKINS: I know. I'll try to talk
9 softer. I don't know what I'm supposed to do here.

10 THE COURT: I don't believe it's relevant.
11 Also, I don't believe this witness understands what you're
12 talking about. So could somebody explain to this witness
13 what you're talking about?

14 MR. PERKINS: Let's go up there and talk to
15 her.

16 THE COURT: What's your position,
17 Mr. Harrison?

18 MR. HARRISON: Could I have just a second?

19 THE COURT: Yes.

20 Just a second, Mr. Perkins.

21 (State's counsel confer.)

22 MR. HARRISON: If the Defense wants to ask
23 this witness if she has ever told her about -- the victim
24 ever told her about an attempt to commit suicide in her
25 past, we're going to withdraw our objection to that

1 question.

2 MR. PERKINS: That's fine, Judge.

3 THE COURT: Can you go up there and explain
4 to her what the question is?

5 MR. PERKINS: Yeah. And what I was planning
6 on doing is asking not just about a suicide attempt but
7 shooting herself.

8 MR. HARRISON: Well, if that's --

9 MR. BINGHAM: I mean --

10 MR. PERKINS: Or we can go up there and talk
11 to her. I don't care which.

12 MR. BINGHAM: I don't know what purpose --
13 what the Defense is trying to get out.

14 THE COURT: I've already sustained the
15 State's motion in limine. Let me -- I've already ruled that
16 it's not relevant. The problem now is they're trying
17 to just ask -- he's trying to ask -- he's trying to ask the
18 question just -- I just don't see the relevancy.

19 MR. BINGHAM: We can probably tell her and
20 explain to her that years ago she mentioned she held a gun.

21 MR. PERKINS: That's fine. I don't care what
22 they tell her. She just doesn't get it. And I don't know
23 how to ask the question any other way. I've tried to ask it
24 as wide as I could.

25 THE COURT: The problem is that she does not

1 understand.

2 MR. PERKINS: I don't doubt that at all.

3 (End of bench conference.)

4 Q (By Mr. Perkins) Ms. McCarty, I'm going to try
5 this one more time.

6 A Okay.

7 Q My question to you -- just so you will make sure
8 that you understand the question. My question to you is, do
9 you know from talking to Carolyn Click whether or not she
10 ever at any time prior to her disappearance in November of
11 2004 (sic) possessed a gun?

12 A Yes, sir.

13 Q Now, is the answer to that yes or no?

14 A Yes.

15 Q Thank you.

16 Now, moving to -- moving onto something,
17 hopefully, we can get answered a whole lot quicker. You've
18 identified on Ms. Click's body a ring; is that correct?

19 A Yes, sir.

20 Q And, obviously from the state of her body, this
21 was after Ms. Click's body was recovered after being buried
22 for a period of about a month; is that right?

23 A Yes, sir.

24 Q I don't know if you know when they recovered it or
25 not. I'm sure it probably caused quite a commotion over

1 there in the neighborhood.

2 But you saw that she was buried with her ring
3 on, at least one ring?

4 A Yes.

5 Q And you recognize that ring?

6 A Yes, sir.

7 Q You also have testified that you work at Foley's.

8 A Yes, sir.

9 Q And worked there at least during Christmas -- and
10 I don't know -- you may work there a lot, but longer hours
11 during the Christmas times; is that right?

12 A Yes, sir.

13 Q This may seem like it doesn't have anything at all
14 to do with the case, but Foley's, like a lot of other
15 department stores, has trouble with people stealing stuff,
16 don't they?

17 A Yes.

18 Q Y'all have a lot of people steal from Foley's and
19 come back to Foley's time and again bringing the stuff back
20 to Foley's and coming right back to Foley's to shoplift
21 something, come right back to Foley's with it?

22 MR. HARRISON: Judge, I'm going to object to
23 relevance with people stealing things from Foley's.

24 THE COURT: Is there some relevancy here?

25 MR. PERKINS: I'm just going to ask her if

1 she ever had that occasion where people would come to
2 Foley's, steal something, leave, come right back to Foley's
3 with the exact same property. I just want to know if she's
4 ever heard of that happening.

5 MR. HARRISON: Objection, relevancy.

6 MR. PERKINS: I'll withdraw the question,
7 Judge.

8 THE COURT: I'll sustain it on relevance,
9 Mr. Perkins.

10 MR. HARRISON: Ask the jury to disregard.

11 THE COURT: The jury will be instructed to
12 disregard the last question, which never was answered.

13 Q (By Mr. Perkins) During the time that you knew
14 Ms. Click did you ever know her to work for Nighthawk
15 Security?

16 A Yes, sir. That was before I met her.

17 Q Do you know what her job responsibilities were
18 with Nighthawk Security?

19 A They had extra security to come in for Foley's.

20 Q So actually, she worked -- were you working at
21 Foley's, then, too?

22 A Yes, but I didn't know her at that time.

23 Q Okay. Do you know as a member of Nighthawk
24 Security whether or not Carolyn had any training with or
25 qualifications to carry a handgun, or do you know?

1 A No, sir, I don't.

2 Q Ms. McCarty, sorry that it took so long and it was
3 so difficult to get through, but I appreciate you being
4 here.

5 MR. PERKINS: I'll pass the witness, Your
6 Honor.

7 THE WITNESS: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. HARRISON:

10 Q Ms. McCarty, I just have a couple of questions for
11 you. When Mr. Perkins was asking you questions about
12 whether Ms. Click had ever talked with you about being in
13 possession of a gun, did you take that to mean in October or
14 November, 2003, at first?

15 A Yes, I did.

16 Q So when you said no, you were referring to the
17 fact that she did not ever tell you anything about any gun
18 in November or October of 2003?

19 A That's right.

20 Q When Ms. Click did tell that you she had ever been
21 in possession of a gun, how long ago did she indicate that
22 was?

23 A It was about six years ago, after we became
24 friends.

25 Q When -- okay. She told you that about six years

1 ago?

2 A Yes.

3 Q So six years ago, Carolyn Click told you she had
4 at one time been in -- had held a gun?

5 A Yes.

6 Q So she would have told you that sometime in 1998
7 or so?

8 A Yes, sir.

9 Q Did she tell you when the time that she had ever
10 held a gun, when that would have been?

11 A I don't know that. She was young person, but she
12 didn't put a date on it.

13 Q So in other words, the time that she held a gun
14 wasn't in 1998. That's when she told you she had held a
15 gun?

16 A Yes, sir.

17 Q Ms. McCarty, thank you.

18 MR. HARRISON: That's all I have.

19 MR. PERKINS: I don't have any other
20 questions.

21 THE COURT: I didn't think you did,
22 Mr. Perkins. Thank you.

23 Ms. McCarty, at this time, you may step
24 down. You will still be under the Rule subject to re-call,
25 so you do not discuss your testimony with any other person

1 in the case, other than the attorneys. So you may step down
2 at this time. You will be subject to re-call by either the
3 State or Defense, if they wish to do so at any later time.
4 Thank you.

5 (The witness leaves the courtroom.)

6 THE COURT: Who will you have next,
7 Mr. Harrison?

8 MR. BINGHAM: Judge, we have Roy Tomlin,
9 Smith County Sheriff's Department.

10 THE COURT: Roy Tomlin.

11 (The witness enters the courtroom.)

12 THE COURT: Sergeant Tomlin, come around,
13 sir, if you would. Have the witness stand, please.

14 You were sworn in this morning?

15 THE WITNESS: Yes, sir.

16 THE COURT: Go ahead, Mr. Bingham.

17 ROY TOMLIN,
18 having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BINGHAM:

21 Q Sergeant Tomlin, if you would, introduce yourself
22 to the jury and tell them how you're employed.

23 A I'm Sergeant Roy Tomlin. I'm employed with the
24 Smith County Sheriff's Department.

25 Q How long have you been in law enforcement?

1 A 17 years.

2 Q That whole time with the Smith County Sheriff's
3 Department?

4 A Yes, it is.

5 Q And obviously you're a certified peace officer in
6 the State of Texas.

7 A Correct.

8 Q Back in October, November, and December of last
9 year, were your duties the same as they are today?

10 A Yes, it was.

11 Q And what duties -- what do you do at the S.O.?

12 A I'm a supervisor over the Patrol Division. I also
13 assist them in answering calls when needed. My
14 responsibility is the schedule of these patrol deputies and
15 make sure that they do their job within the boundaries of
16 the -- excuse me -- policy and procedure.

17 Q Now, the police department has jurisdiction within
18 the City?

19 A Correct.

20 Q As do you with the Sheriff's Department, but it
21 also expands to the County?

22 A Correct.

23 Q. Now, the police department has jurisdiction within
24 the county.

25 A. Correct.

1 Q. But like the Department of Public Safety would
2 have jurisdiction state-wide?

3 A. Correct.

4 Q. Is it one of the -- is it one of the main
5 functions of the Sheriff's Department to oversee the jail
6 and the security of the courthouse?

7 A. Yes, sir, correct.

8 Q. Now, the Patrol Division is a separate division
9 within the Smith County Sheriff's Department that would
10 actually answer calls of assistance that are called in to
11 911?

12 A. Correct.

13 Q. Did you have an occasion on 12-17 of '03 to
14 respond to County Road -- to 18853 County Road 2323?

15 A. Yes, that is correct.

16 Q. And were you able to -- is that location within
17 Smith County, Texas?

18 A. Yes, it is.

19 Q. And were you able to determine whose residence
20 that was?

21 A. It was my understanding that it was -- I believe
22 her name was Carolyn Click.

23 Q. Now, when you responded out there on 12-17-03,
24 what was the purpose of you going to 18853 County Road 2323
25 in Smith County?

1 A. It was my intention to go out there and try to
2 make contact with Ms. Click, to check her welfare.

3 Q. Okay. Now, were you able to -- did you have any
4 contact with Ms. Click?

5 A. No, I didn't.

6 Q. If you recall, did you walk around the residence
7 at all?

8 A. Yes, I did.

9 Q. Did you see any vehicles at the residence, if you
10 recall?

11 A. The best I can recall, I believe there was one
12 vehicle there.

13 MR. BINGHAM: May I approach the evidence,
14 Your Honor?

15 THE COURT: Yes, you may.

16 Q. (By Mr. Bingham) Let me show you State's Exhibit
17 No. 2, although the 2 is upside down and ask you if you
18 recognize that.

19 A. Yes, I believe that is the vehicle.

20 Q. And this vehicle was at the residence on
21 December 17th when you responded there?

22 A. Yes, correct.

23 Q. Did you make any contact with any individual at
24 Mrs. Click's residence when you went there?

25 A. I made contact with a white male subject by the

1 name of Tracy Beatty.

2 Q. Tracy Beatty.

3 MR. BINGHAM: May I approach the witness?

4 THE COURT: Yes.

5 Q. (By Mr. Bingham) Let me show you State's
6 Exhibit 22 and ask you to look at that photograph and see if
7 that image would look familiar to you.

8 A. Yes, it does.

9 Q. Okay. Who is portrayed in State's Exhibit No. 22?

10 A. Do what now?

11 Q. Who's image is portrayed in State's Exhibit
12 No. 22? Who is that?

13 A. That is Tracy Beatty.

14 Q. Okay. Is that the individual that you contacted
15 as he appeared when you contacted him?

16 A. Yes, it is.

17 MR. BINGHAM: May I approach again?

18 THE COURT: Yes.

19 MR. BINGHAM: Tender State's Exhibit 22 to
20 Mr. Hawk.

21 MR. HAWK: The only objection we've got,
22 Judge, is to relevance right now, but no other objections as
23 to the exhibit.

24 THE COURT: Overruled.

25 MR. BINGHAM: May I approach the witness,

1 Judge?

2 THE COURT: Yes.

3 Q. (By Mr. Bingham) Now, as you look at State's
4 Exhibit No. 22, it's a small photograph.

5 THE COURT: It's admitted.

6 MR. BINGHAM: I'm sorry, Judge. I thought
7 that's what you said. I apologize.

8 THE COURT: Go ahead.

9 Q. (By Mr. Bingham) Do you see, Officer Tomlin,
10 State's Exhibit 22 there?

11 A. Yes, I do.

12 Q. Do you see that defendant anywhere in the
13 courtroom today?

14 A. Yes, I do.

15 Q. Could you point him out and identify an article of
16 clothing worn by him?

17 A. It would be the gentleman that would be to the
18 left of Mr. Perkins, wearing the dark suit, polka-dotted
19 tie, shoulder-length hair.

20 Q. Okay.

21 MR. BINGHAM: Your Honor, if you would let
22 the record reflect he identified the defendant and pointed
23 to the defendant, also.

24 THE COURT: The record will reflect that the
25 witness has identified the defendant.

1 Q. (By Mr. Bingham) Now, in this photograph,
2 Mr. Beatty has some facial hair; is that correct?

3 A. Yes, he did.

4 Q. Now, can you see on Mr. Beatty over his left eye
5 he's got a little tear drop tattooed underneath his eye?
6 Are you able to see that?

7 A. I don't recall. I don't recall seeing that out
8 there.

9 Q. Do you see in here, this little thing right here
10 (indicating) on his eye right here, on State's Exhibit 22?
11 You see that little dot right there?

12 A. Yes, sir.

13 Q. Can you look over there and recognize that he's
14 got some dot under his left eye?

15 A. Yes, I can.

16 Q. So you're able to say that this person in State's
17 Exhibit 22 is the same person that sits over there at that
18 same table?

19 A. To the best of my knowledge, he looks like the
20 same person.

21 MR. BINGHAM: Okay. May I publish this to
22 the jury, Judge?

23 THE COURT: Yes.

24 MR. BINGHAM: For them to pass around for
25 them to look at.

1 Q. (By Mr. Bingham) Now, when you got out there and
2 you made contact with the defendant, Mr. Beatty, how did you
3 make contact with him? Was he outside? Did you knock on
4 the door?

5 A. We knocked on the door, and he came to the door.
6 He was inside the residence.

7 Q. Okay. Do you recall how he was dressed?

8 A. No, I can't recall how he was dressed.

9 Q. Okay. Now, when he answered the door, were you
10 able to tell how he appeared, I guess, physically? Did he
11 appear sober to you, or do you recall?

12 A. The best I recollect he was sober, yes.

13 Q. Did you -- what did you say to him when he
14 answered the door?

15 A. We introduced ourselves. I introduced who I was
16 and why I was there. I asked if Ms. Click was there, you
17 know, that I needed to see her and talk to her.

18 Q. Okay. What did he say?

19 A. He told me that she wasn't there.

20 Q. Okay. Now, about what time of night was this; do
21 you recall?

22 A. This was during the daytime.

23 Q. During the daytime?

24 A. Yes, sir.

25 Q. And do you recall what day of the week

1 December 17th was?

2 A. No, sir, I don't. All I know is it was on the
3 17th of December.

4 Q. Okay. You're sure about that date, just not the
5 day of the week?

6 A. Correct.

7 Q. Now, when you asked where Ms. Click was and he
8 said she was not there, did you make any inquiry as to
9 whether or not he knew where she was?

10 A. Yes, I did.

11 Q. Okay. What did he tell you?

12 A. He told me that she had gone to Kansas with her
13 boyfriend, and he gave me the name of Junior Reynolds.

14 Q. Now, did the location in Jacksonville, Texas, ever
15 come up?

16 A. That's where he told me that they were at was in
17 Jacksonville.

18 Q. That they had gone to Kansas and were now in
19 Jacksonville, Texas?

20 A. He first told me that they went to Kansas. They
21 stopped off, I believe, in Oklahoma and now they were in
22 Jacksonville at her boyfriend's house.

23 Q. Okay. And did he say when the last time he had
24 seen Carolyn Click was?

25 A. He told me the day before Thanksgiving.

1 Q. Okay. Did he mention whether he might be
2 expecting her back?

3 A. He told me that night.

4 Q. Okay. On the 17th?

5 A. Yes, correct.

6 Q. Now, did you make any inquiry as to whether or not
7 he knew anything about Junior Reynolds?

8 A. The best I recall reflecting to my report, I
9 believe I asked him if he knew an address or a phone number.

10 Q. Okay. And what did he state he knew about this
11 individual, Junior Reynolds?

12 A. He told me that he only -- he stated that he just
13 knows he lives in Jacksonville and drives a blue Dodge
14 dually, and that's all he could tell me.

15 Q. Were you able to confirm whether or not there was
16 a Junior Reynolds?

17 A. I wasn't. I did contact Dispatch to see if they
18 could find anything on the name.

19 Q. Anything come back?

20 A. They advised they couldn't find nothing on it.

21 Q. Okay. So your dispatch advised negative on Junior
22 Reynolds?

23 A. Correct.

24 Q. Now, did you -- how were you to make contact with
25 Carolyn Click when she was to supposedly return home that

1 night?

2 A. I advised Mr. Beatty there that as soon as she got
3 home that she needed to call the Sheriff's office and make
4 contact with us so, you know, we could follow up on the
5 welfare concern, to make sure that she was all right.

6 Q. To your knowledge, did Dispatch ever hear from
7 Carolyn Click that night?

8 A. Not that I'm aware of.

9 Q. Were you there when the -- when the deputies began
10 to excavate the body of Carolyn Click?

11 A. No, I wasn't.

12 Q. Now, you stated that December 17th of '03 is the
13 date you went out there. Do you recall if that was a
14 weekday or a weekend?

15 A. I'm wanting to say -- I was thinking it was on a
16 Saturday. I may be wrong.

17 Q. And it would have been during the daytime, so
18 before --

19 A. It was around midday, to the best of my knowledge.

20 Q. Was midday noon?

21 A. Correct.

22 Q. Was anyone else at the residence with Tracy
23 Beatty?

24 A. Not that I observed, no.

25 Q. The car that was parked, was it behind the mobile

1 home?

2 A. Yes, it was. It was in the back of the residence.

3 Q. Now, at that point, did -- on 12-17, did the
4 defendant ever admit to you that Junior had killed his
5 mother?

6 A. No, he didn't.

7 Q. Did he ever mention to you that he came in and saw
8 Junior standing over his -- the body of his mother so he
9 killed Junior?

10 A. No.

11 Q. Did he ever mention anything to you about Cedar
12 Creek?

13 A. No, he didn't.

14 Q. How about did he ever mention to you that he
15 pushed his mom, and his mom's head hit a table?

16 A. No, he didn't.

17 Q. Did he ever mention to you at all about knowing
18 that his mother was dead or any of maybe one or two or three
19 or four or five or six different stories?

20 A. No, he didn't.

21 MR. BINGHAM: Judge, may I approach the
22 evidence?

23 THE COURT: Yes.

24 Q. (By Mr. Bingham) When he walked around the house,
25 do you recall if -- do you recall seeing this area right

1 here in State's Exhibit 6, this being the back of the mobile
2 home (indicating)?

3 A. This is going to be --

4 Q. Let me show you a bigger picture. It would be a
5 better reference of -- that was State's 6. Let me show you
6 State's Exhibit 4. This would kind of give you a better
7 reference point.

8 A. Yeah, I do recall something similar to that, yes.

9 Q. Now, at the time that you went out there, you
10 obviously had no indication that the body of Ms. Click
11 laid --

12 MR. HAWK: Objection, Judge, to leading.
13 He's just leading. I'm going to ask him to ask questions,
14 Judge.

15 THE COURT: Well, I'll sustain the objection.

16 MR. BINGHAM: We would ask him not to make a
17 speaking objection.

18 THE COURT: Well, he's just objecting to you
19 leading.

20 MR. BINGHAM: Sure. I'll rephrase it.

21 THE COURT: Don't lead the witness.

22 MR. BINGHAM: I'll rephrase it.

23 Q. (By Mr. Bingham) At the time that you went out
24 there, did you have any reason at all to be suspicious at
25 all of this area underneath the timber?

1 A. No, I didn't.

2 Q. At that time, were you aware that -- or did you
3 know whether or not the body of Carolyn Click, as portrayed
4 in State's Exhibit No. 18, was underneath that timber or cat
5 litter?

6 A. No, I didn't.

7 Q. Let me ask you something, Sergeant. What was the
8 mood of the defendant? The reason I'm asking -- what was
9 his mood and mannerisms?

10 A. My opinion of his mood is he didn't appear to be
11 nervous.

12 Q. He did?

13 A. He did not.

14 Q. He didn't appear to be nervous. Did he appear to
15 be upset?

16 A. No, sir, he didn't.

17 Q. Did he appear to be sad or distraught?

18 A. Maybe -- I wouldn't call it upset. No, I wouldn't
19 call it either one, really.

20 Q. Did he appear in any way to be upset about the
21 fact that his mom was buried behind the mobile home where he
22 buried her?

23 A. Not to my knowledge, no, sir.

24 Q. Now, at that point, unable to contact Carolyn
25 Click or get any additional information, you leave; is that

1 correct?

2 A. That's correct.

3 Q. And was that basically -- on that call, was that
4 the last involvement you had in this case?

5 A. Yes, it was.

6 Q. And at any point, did you have any other official
7 involvement in this case whatsoever?

8 A. No. No, I didn't.

9 Q. Now --

10 MR. BINGHAM: May I approach the witness,
11 Judge?

12 THE COURT: Yes, sir.

13 Q. (By Mr. Bingham) Let me show you this piece of
14 paper, this calendar, and see if this refreshes your memory,
15 this calendar as to what date the 17th would have been on.

16 A. On a Wednesday.

17 Q. It was on a Wednesday. So on December 17th,
18 2003, which was a Wednesday around noon, this defendant is
19 where?

20 A. At this residence.

21 Q. Sergeant Tomlin, thank you.

22 MR. BINGHAM: We'll pass the witness.

23 THE COURT: Mr. Hawk?

24 MR. HAWK: No questions, Judge.

25 THE COURT: Sergeant, you may step down.

1 May this witness be finally excused, or do
2 you wish him to stay subject to re-call?

3 MR. BINGHAM: Subject to re-call, Judge.

4 THE COURT: Sergeant, you'll be subject to
5 re-call. Be sure the State can get in touch with you.
6 Thank you, sir.

7 (The witness leaves the courtroom.)

8 THE COURT: Who do you have next,
9 Mr. Harrison?

10 MR. HARRISON: Judge, can we approach real
11 quick?

12 THE COURT: Yes, sir.

13 Are y'all doing okay? I know we've been up
14 here a little bit. Okay.

15 (At the bench, on the record.)

16 MR. HARRISON: Judge, I apologize. Our next
17 witness is Jay Patzke. He's with the parole office. We
18 need to, I guess, talk about how to reference where he
19 works. I certainly am not -- I dare not mention that he's
20 from parole or works for parole. There are very specific
21 questions I'm going to be asking him about records from
22 parole.

23 I'm not going to reference them as parole
24 records certainly, but I don't know -- Judge, there's
25 records about his -- the fact that the defendant was

1 unemployed during October, November, and December of 2003
2 that I'll be asking him about. I'm going to reference the
3 fact that he has possession of certain records related to
4 Tracy Beatty but not that he's in any way affiliated with
5 the parole office.

6 And I guess I just wanted to ask guidance
7 from the Court on what to advise him. I've advised him not
8 to mention that he works for parole or that these are parole
9 records or that Tracy Beatty was ever on parole, but I just
10 need to know how the Court wants me to, I guess, refer to
11 the records.

12 THE COURT: Well, I don't see -- you can
13 refer about the records. Just ask him if he has records.
14 Be sure he understands --

15 MR. HARRISON: Yes, sir.

16 THE COURT: -- not to say anything other than
17 these are records.

18 MR. BINGHAM: Judge, in the past, we've
19 referred to him as working for a state agency and just left
20 it at that.

21 MR. PERKINS: We're going to have some pretty
22 major objections to this --

23 THE COURT: I think -- go ahead.

24 MR. PERKINS: -- because I believe that it
25 would leave an impression in the jurors' mind exactly what

1 state agency it would be and why he would be keeping track
2 as to whether or not he was employed. It's going to leave
3 them with the only impression that either he's a probation
4 officer or a parole officer.

5 THE COURT: I think you can have him state
6 his name. I think you can say that he works here in Tyler
7 and that -- he does have records, and he's familiar with the
8 records that would show whether or not the defendant, Tracy
9 Beatty, was employed in the months of October.

10 MR. HARRISON: October, November, and
11 December of 2003.

12 THE COURT: He would say, "Yes, I do have
13 those records" and say, "What do they show?" And his
14 response would be, "They show he was not employed in" --

15 MR. HARRISON: October, November, and
16 December of 2003.

17 THE COURT: I think that's all.

18 MR. HARRISON: Okay. Yes, sir.

19 And then there's one other document that I
20 want to ask him about, and I'm not offering any of these
21 documents into evidence certainly, but I want to reference
22 the document that the defendant filled out that has a
23 specific question about whether he's ever had thoughts of
24 killing someone. And that's contained also in those parole
25 records that he's custodian of.

1 And, again, I won't reference anything about
2 what agency or anything that we've already talked about, but
3 those are the only areas that I intend to ask him about.

4 MR. PERKINS: Obviously, we're going to have
5 to see some predicate as to what those circumstances --
6 those kinds of things are.

7 MR. HARRISON: Sure. I'll lay the proper
8 predicate other than -- if I need to outside the presence --
9 and if I need to lay the predicate to get past the hearsay
10 objection, then I'll do it outside the presence of the jury
11 for record purposes.

12 But this would be -- Mr. Perkins has probably
13 seen this. It's dated October 13th of 2003 where he
14 specifically asked if he ever had thoughts of killing
15 somebody, and he said yes. And the following questions are,
16 has he ever tried, and he said yes.

17 So that's my question.

18 MR. PERKINS: And that's relevant to what?

19 MR. HARRISON: Well, if he's formed the
20 intent to kill Carolyn Click on November 25th. I think
21 whether he's had thoughts of killing someone is relevant.

22 THE COURT: I can rule on the relevancy right
23 now. I'm trying to understand that -- you want to continue
24 asking him about does he have records and --

25 MR. HARRISON: Yes, sir.

1 THE COURT: -- and without reference to -- I
2 mean, you can't make any reference to the record.

3 MR. HARRISON: No. I understand that.

4 MR. PERKINS: Well, we're going to object to
5 all of this, and we'll stand ready with an objection to
6 any -- I mean, this is dangerous ground that they're on. I
7 think they realize that or they would not have approached in
8 the first place.

9 MR. HARRISON: Well, Judge, clearly, I'm not
10 going to -- I think it would be improper to in any way
11 reference that this is a parole officer. That's why I'm up
12 here at the bench outside the presence of the jury.

13 THE COURT: And you can't make it -- I mean,
14 and, obviously, you know that. This is in the record.

15 MR. HARRISON: No, absolutely not.

16 THE COURT: I think you know that. Well --
17 okay. Mr. Perkins will have his objection at the time.

18 (End of bench conference.)

19 THE COURT: Okay. Call your next witness,
20 Mr. Harrison.

21 MR. HARRISON: I call Jay Patzke.

22 THE COURT: Jay Patzke.

23 (The witness enters the courtroom.)

24 THE COURT: Mr. Patzke, just come around and
25 have a seat here at the end chair where the microphone is.

1 Were you sworn earlier?

2 THE WITNESS: Yes, sir.

3 THE COURT: If you would, just sort of adjust
4 that microphone where you can speak into it, please.

5 Go ahead, Mr. Harrison.

6 JAY PATZKE,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. HARRISON:

10 Q. Can you introduce yourself to the Ladies and
11 Gentlemen of the Jury?

12 A. My name is Jay Patzke.

13 Q. Do you live here in Tyler?

14 A. No, sir. I live in Palestine, Texas.

15 Q. I want to ask you a few questions about an
16 individual by the name of Tracy Beatty. Do you have
17 knowledge or information about Tracy Beatty pertaining to
18 work history and things of that nature?

19 A. Yes, I do.

20 Q. Do you have information or knowledge about whether
21 Tracy Beatty was employed or had employment in December of
22 2003?

23 A. Yes, sir, I do.

24 Q. Was he or did he have employment in 2003?

25 A. No, sir, he was not.

1 Q. Was he unemployed in December of 2003?

2 A. Yes, sir.

3 Q. Do you have information as to see whether Tracy
4 Beatty was employed or not employed in November of 2003?

5 A. Yes, sir.

6 Q. Was he employed or was he unemployed?

7 A. He was unemployed.

8 Q. And that would be in November of 2003?

9 A. Yes, sir.

10 Q. Do you have information or knowledge as to whether
11 Tracy Beatty was employed or unemployed in October of 2003?

12 A. Yes, sir, there is.

13 Q. And was he employed or unemployed in October of
14 2003?

15 A. I would have to review the record that would
16 indicate that, sir.

17 Q. To yourself, if you need to, that's fine.

18 MR. HARRISON: Oh, I'm sorry.

19 May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 MR. HARRISON: Bates stamped 255.

22 Q. (By Mr. Harrison) And just review it to yourself.

23 A. Yes, sir. He was unemployed during that time.

24 Q. Unemployed during October of 2003?

25 A. Yes, sir.

1 Q. The months that I've talked with you about,
2 December -- let me start in reversal order, which would be
3 chronological order, October, November, and December of
4 2003, was that information given to you by Tracy Beatty?

5 A. It was reported to the individual that made that
6 record, yes, sir.

7 Q. And is it reported by Tracy Beatty?

8 A. Yes, sir.

9 Q. Now, Mr. Patzke, do you have any information as to
10 whether Tracy Beatty was asked by another individual, "Have
11 you ever thought seriously about killing others?"

12 A. Yes, sir. That's present in the records.

13 Q. Would that information have been obtained on
14 November 13th, 2003?

15 A. Yes, sir, I believe that's the correct date.

16 Q. And would that information have been perceived or
17 given by Tracy Beatty?

18 A. Yes, sir.

19 Q. And in response to "have you ever thought
20 seriously about killing others," what was the response by
21 Tracy Beatty?

22 A. Yes.

23 MR. PERKINS: Judge, I'm going to object to
24 that answer and would like to take the witness on voir dire
25 for the purpose of possible objection.

1 THE COURT: Go ahead.

2 VOIR DIRE EXAMINATION

3 BY MR. PERKINS:

4 Q. Mr. Patzke, am I pronouncing that right?

5 A. Yes.

6 Q. Mr. Patzke, my name is Robert Perkins. I have a
7 question for you, sir. This is in response to a question
8 propounded to Mr. Beatty by you or someone under your
9 direction; is that correct?

10 A. Yes, sir.

11 MR. PERKINS: Judge, I have a matter I need
12 to take up outside the presence of the jury.

13 THE COURT: All right. Ladies and Gentlemen,
14 we'll be in recess for ten minutes.

15 All rise for the jury.

16 (The jury leaves the courtroom.)

17 (Open court, defendant present, no jury.)

18 THE COURT: All right. For the record,
19 Mr. Perkins is on voir dire for potential objection. We are
20 outside the presence of the jury.

21 VOIR DIRE EXAMINATION

22 BY MR. PERKINS:

23 Q. Mr. Patzke, for purposes of the record, you work
24 for the State Board of Pardons and Paroles; is that correct?

25 A. No, sir. I work for the Texas Department of

1 Criminal Justice, Parole Division, sir.

2 Q. Okay. And there is a difference between those
3 two?

4 A. Yes.

5 Q. All right. For your purposes, if somebody, who is
6 on parole, still under the supervision and in the custody of
7 the State of Texas?

8 A. I believe that's the legal definition, yes, sir.

9 Q. Okay. So you would agree with me, then, that
10 Tracy Beatty is in custody for purposes of having to report,
11 having to come in, and having to answer questions, those
12 sort of things?

13 A. At this time, sir?

14 Q. At the time of the questions that the State was
15 asking you about?

16 THE COURT: And specifically that last one.

17 A. Yes, sir.

18 Q. (By Mr. Perkins) Prior to him coming in to answer
19 questions on the date and times in question, the one that
20 Mr. Harrison was asking you about, when the questions were
21 propounded to him if he had ever thought about killing
22 someone, did you or anyone under your direction Mirandise
23 Mr. Beatty?

24 A. No, sir. I believe part of that record also
25 indicates that Mr. Beatty requested a placement, and the

1 form mentioned is a screening form utilized for all
2 referrals through the Andrews Center.

3 Q. So the answer to my question would be that no one
4 at your direction Mirandised Mr. Beatty; is that correct?

5 A. That's correct, sir.

6 Q. No one informed him that he had the right to
7 remain silent and not make any statement at all; is that
8 correct?

9 A. That's correct.

10 Q. No one told him that any statement that he made at
11 this parole hearing or placement hearing, or whatever you
12 want to call it, could be used against him at his trial;
13 nobody told him that?

14 A. I believe part of the form indicates that we can
15 release the information available to us, sir.

16 Q. And I'm asking you specifically, Mr. Patzke, if
17 anybody told him that any statement that he made would be
18 used against him at a subsequent trial? Did anybody tell
19 him that?

20 A. Not to my knowledge, sir.

21 Q. Did anybody tell him that any statement that he
22 made may be used against him as evidence in court?

23 A. Not to my knowledge, sir.

24 Q. Did anybody inform him that he had a right to have
25 a lawyer present to advise him prior to and during any

1 questioning?

2 A. Not to my knowledge, sir.

3 Q. Did anybody inform Mr. Beatty that if he was
4 unable to employ a lawyer, he had the right to have a lawyer
5 appointed to advise him prior to and during any questioning?

6 A. Not to my knowledge, sir.

7 Q. Did anybody inform him that he had a right to
8 terminate the interview at any time?

9 A. Not to my knowledge, sir.

10 Q. Now, it's previously your testimony that for
11 purposes that Mr. Beatty is, for lack of a better word, in
12 custody at the time that he is propounded these questions;
13 is that correct?

14 A. Yes, sir.

15 Q. And you would agree that your employer, the Texas
16 Board of Pardons and Paroles, Tyler District Parole Office
17 is a state agency?

18 A. Yes, sir.

19 Q. Do you consider yourself to be a member of law
20 enforcement?

21 A. No, sir.

22 Q. Do you work for an agency that works closely with
23 law enforcement agencies?

24 A. Yes, sir. Texas Government Codes, Section 508.313
25 allows me to release information released, sir.

1 MR. PERKINS: That's all we would have on the
2 voir dire, Your Honor.

3 I think the Court probably understands what
4 our position is, that the last question asked and answer
5 given was taken in violation of 38.22. According to this
6 witness, Mr. Beatty was in custody, was questioned without
7 Miranda warnings, and his answers have been, despite the
8 fact that no warnings were given, that he had no opportunity
9 to have counsel provided for him, that he knew that his
10 answers would be used against him or could be used against
11 him in court, he was asked questions. And in response to
12 those questions, he responded in a way that that has now
13 been proffered in front of this jury by the State of Texas.

14 It is improper. Those questions and the
15 answers propounded to those questions are improperly taken,
16 inadmissible, highly prejudicial, not probative, and in our
17 opinion, are grounds for a mistrial.

18 THE COURT: Are you talking about the last
19 one that he asked?

20 MR. PERKINS: I'm talking about the last
21 question that he asked. And I don't know. I could have the
22 court reporter read it back about where you ask a question
23 about have you ever thought about killing somebody, and
24 Mr. Patzke's answer, during my objection, was yes.

25 THE COURT: Go ahead.

1 MR. HARRISON: Well, Judge, parole officers
2 aren't peace officers. They're not law enforcement.
3 They're specifically excluded from being peace officers.
4 This was not -- despite the testimony that Mr. Beatty was in
5 custody, he was not under arrest. He was not free to leave.
6 This was not a custodial interrogation by a peace officer.
7 He was not in custody. He could have left at anytime. He
8 was not under arrest.

9 This is a parole officer giving him a
10 screening test that the defendant requested, asking him
11 questions and writing down the answers.

12 THE COURT: Okay. Did the witness testify to
13 who it was that was asking him the questions?

14 MR. HARRISON: He did not testify -- I can
15 ask him.

16 THE COURT: Go ahead and ask him.

17 VOIR DIRE EXAMINATION

18 BY MR. HARRISON:

19 Q. Who was the parole officer asking these questions?

20 THE COURT: Well, I mean, was it a parole
21 officer? I just want to get this ironed out before we get
22 the jury in here.

23 Q. (By Mr. Harrison) Was this a parole officer?

24 A. Yes, sir. It was a parole officer, Simone Norman.

25 Q. Does she work for -- who does she work for?

1 A. She works for the Texas Department of Criminal
2 Justice, Parole Division.

3 Q. Is a parole officer a peace officer?

4 A. No, sir.

5 Q. Is a parole officer a law enforcement?

6 A. No, sir.

7 Q. As a parole officer, if a parolee is reporting to
8 his parole officer and chooses not to answer any questions,
9 is he free to leave?

10 A. Yes.

11 THE COURT: Anything else?

12 MR. HARRISON: No. That's all I have.

13 THE COURT: Well, while we're outside the
14 presence of the jury, I'll overrule the objection and deny
15 the motion for mistrial.

16 MR. PERKINS: Judge, I have an additional
17 question on the voir dire.

18 THE COURT: Okay. I'm sorry. Go ahead.

19 VOIR DIRE EXAMINATION

20 BY MR. PERKINS:

21 Q. Mr. Patzke, are you saying that if somebody on
22 parole came in and decided not to answer any questions, they
23 have the right to just walk out, not answer any questions,
24 and they're free to leave at any time?

25 A. Yes, sir. At this time, that happens regularly.

1 We don't have the power of arrest. We have to go through a
2 warrant request process and so forth. Yes, sir.

3 Q. And so what are the ramification of leaving
4 without answering any questions?

5 A. It would depend on what the questioning was about,
6 what the requirement was, whether it was a requirement of
7 parole to participate in a particular program. On this
8 particular individual, I do not recall. I don't believe he
9 had a psychological requirement by the Parole Board, so his
10 voluntary request was just that, a voluntary self-referral
11 that "I want to go for treatment to the Andrews Center."

12 MR. PERKINS: I don't have any additional
13 questions.

14 THE COURT: Okay. The Court's -- do you have
15 anything else?

16 MR. HARRISON: No.

17 THE COURT: The Court's considered the
18 additional testimony. The Court maintains its ruling and
19 overruling the objection and denying the motion for
20 mistrial.

21 MR. PERKINS: And, Judge, just while we're
22 off the record and the jury is not present, it's my
23 understanding that the State -- they've asked one question,
24 have you ever thought about killing someone, and the
25 defendant's answer was yes.

1 The next question, I believe, Judge, and I
2 don't recall exactly. Maybe Mr. Harrison could help me out
3 with this.

4 THE COURT: Mr. Harrison, what's the next
5 question? What's the next question?

6 MR. HARRISON: Judge, the next question was
7 if yes, which the answer was yes, have you tried. And the
8 response by Mr. Beatty was yes.

9 MR. PERKINS: I don't see how that's relevant
10 or probative to anything, unless this is after Carolyn
11 Click's death. Again, the 40 -- not like it makes a whole
12 lot of difference at this point in time, but, again, the
13 prejudicial value of that -- what is the purpose in asking
14 that question? I mean, really, what's the purpose of asking
15 that question, other than prejudicing the defendant? How is
16 that relevant to anything?

17 THE COURT: All right. Is that your
18 objection?

19 MR. PERKINS: No, that's part of it, Judge,
20 but that's the plain part of it.

21 THE COURT: Well, I'm trying to wait until
22 you finish. Do you have anything else you want to add to it
23 other than that at this time?

24 MR. PERKINS: Well, other than it being
25 irrelevant, being more prejudicial than probative, having

1 nothing to do with the facts and circumstances of the case
2 on trial, other than those three minor things, I can't think
3 of anything right now.

4 THE COURT: I just didn't want to go any
5 further until I was sure that you were through with your
6 objection. That's what I was waiting on.

7 MR. HARRISON: I'm not going to ask that
8 question.

9 THE COURT: Go ahead. What's the State's
10 position?

11 MR. HARRISON: I'm not going to ask the
12 question.

13 THE COURT: I'm sorry?

14 MR. HARRISON: I think it would be
15 admissible, but I'm not going to ask that question.

16 THE COURT: Which question are you not going
17 to ask?

18 MR. HARRISON: I'm not going to ask the only
19 one left that I haven't asked yet, which is yes, have you
20 tried. I'm not going to ask that.

21 The last question I asked was, have you ever
22 thought seriously about killing others, the answer is yes,
23 I'm going to leave it there.

24 THE COURT: But that's the one question
25 you're going to ask and then --

1 MR. HARRISON: Actually, I believe I've
2 already asked it. I'll ask it again.

3 THE COURT: Mr. Perkins was trying to make an
4 objection at the time of the answer, so the Court is going
5 to allow you to ask that question.

6 MR. HARRISON: I'll ask that question and
7 nothing else.

8 THE COURT: All right.

9 MR. PERKINS: Well, if he's already asked it
10 and it's already been answered, I'm going to object to it as
11 being asked and answered.

12 THE COURT: Well, I'll overrule it,
13 Mr. Perkins. I think the answer was given, as I think you
14 pointed out earlier at the time you were trying to object,
15 so the Court is going to allow him to ask that question and
16 that one question be answered.

17 Allen or Jim, will one of y'all get Carleton
18 and tell him to bring the jury in, please?

19 MR. HAWK: Judge, if we could, for purposes
20 of preserving the right of Mr. Beatty on appeal on this
21 specific issue with regard to the record --

22 THE COURT: Yes, sir.

23 MR. HAWK: -- we're going to offer, if we
24 can, the certificate of mandatory supervision from this past
25 October and December.

1 THE COURT: You've got it marked?

2 MR. HAWK: I don't have it marked yet, but
3 I'm about to.

4 THE COURT: Just mark it.

5 MR. HAWK: We just want that as an exhibit
6 outside the presence of the jury.

7 MR. HARRISON: Can I see what it is?

8 THE COURT: Sure.

9 MR. HAWK: It's an actual certificate that
10 requires as a condition submitted to Counsel.

11 THE COURT: Defendant's Exhibit --

12 MR. HAWK: And I don't have it marked yet,
13 Judge, until the reporter allows me to. We'll mark it as
14 Defendant's Exhibit 1.

15 (The jury enters the courtroom.)

16 (Open court, defendant and jury present.)

17 THE COURT: I'm sorry. Please be seated.
18 Thank you very much.

19 Go ahead, Mr. Harrison.

20 MR. HARRISON: Thank you.

21 DIRECT EXAMINATION (CONTINUED)

22 BY MR. HARRISON:

23 Q. Mr. Patzke, we were talking about information that
24 you received from November 13th, 2003, would this
25 information have been obtained from Tracy Beatty?

1 A. Yes, sir, it would have.

2 Q. And the question that was posed to Mr. Beatty,
3 have you ever thought seriously about killing others, what
4 was Mr. Beatty's response?

5 A. Yes.

6 Q. And this would be information coming directly from
7 Tracy Beatty?

8 A. Yes, sir.

9 Q. All the information that you've described was
10 given by Tracy Beatty himself?

11 A. Yes, sir.

12 Q. Thank you, sir.

13 MR. HARRISON: That's all I have.

14 THE COURT: Mr. Perkins?

15 MR. PERKINS: Just briefly.

16 CROSS-EXAMINATION

17 BY MR. PERKINS:

18 Q. Good afternoon, Mr. Patzke. Just a couple of
19 questions for you with regard to this unemployment issue and
20 the other issues that you've talked about.

21 Have you ever heard of the term "junk in,
22 junk out"? It's a computer term. Have you ever heard that
23 term?

24 A. Not really, no, sir.

25 Q. Basically, what it means is, it's like the output

1 is as only reliable as the input, okay? If a person lies,
2 then the results that y'all are gonna have are gonna be lies
3 as well, right? You have to depend on the honesty of the
4 answers, don't you, to some extent?

5 A. Under these circumstances, depending on the
6 answer, we would have verified that information, yes, sir.

7 Q. Okay. And you personally did not take these
8 answers --

9 A. No, sir.

10 Q. -- from Mr. Beatty?

11 A. No, sir, I did not.

12 Q. In fact, you don't even know Mr. Beatty, do you?

13 A. No, sir.

14 MR. PERKINS: I don't have any other
15 questions.

16 THE COURT: Mr. Harrison?

17 MR. HARRISON: Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. HARRISON:

20 Q. So when Mr. Perkins references junk in and junk
21 out and you have to take at face value what a person tells
22 you, I guess somebody who was asked are you employed in the
23 month of November of 2003 could have said no, when, in fact,
24 they were and they were just lying about it. Is it
25 possible?

1 A. Sure. If they had indicated that they were
2 employed, we would have asked for verification, such a as
3 check stub or a time card and so forth.

4 Q. But stating that they were actually unemployed
5 could be a lie when, in fact, they were employed?

6 A. Yes, sir.

7 Q. Stating that they were unemployed in November of
8 2003, could be a lie if, in fact, they were?

9 A. Yes, sir.

10 Q. Stating they were unemployed in December could be
11 a lie if they, in fact, were employed?

12 A. Yes, sir.

13 Q. Stating that they had thoughts of killing people,
14 stating, "Yes, I have had thoughts of killing people," could
15 be a lie if you really hadn't had thoughts of killing
16 people?

17 A. Yes, sir.

18 Q. Does it seem to you more likely that someone would
19 lie about having thoughts of killing someone or not having
20 thoughts of killing people? I mean, which would you expect
21 to be more likely to lie about?

22 A. I would think a rational person wouldn't tell you
23 their -- their thoughts about killing someone.

24 Q. And again, this information is coming from the
25 defendant?

1 A. Yes, sir.

2 MR. HARRISON: That's all I have.

3 THE COURT: Mr. Perkins?

4 MR. PERKINS: Just briefly.

5 RECROSS-EXAMINATION

6 BY MR. PERKINS:

7 Q. And I guess saying that you were unemployed may or
8 may not have benefits over telling the truth about your
9 employment if your employment was something maybe it
10 shouldn't be.

11 Let me give you a hypothetical. Let's say
12 that I am -- oh, I don't know -- a dope dealer, and I got a
13 lot of money from dealing dope. I might be better off
14 saying I was unemployed in certain circumstances, wouldn't
15 I?

16 A. Yes, sir.

17 Q. I mean, you would agree with that, wouldn't you?

18 A. I agree.

19 Q. So you can see you depend on the veracity of the
20 person who is giving the answers. And a rational person in
21 that situation may say, "Hey, I'm unemployed." Wouldn't
22 that make more sense to you? How are you going to verify
23 something -- oh, I don't know -- as nefarious as that?

24 A. Job interviews, employment contacts.

25 Q. You got a lot of job interviews when you're

1 dealing dope?

2 A. Workers' Commission, documentation for food
3 stamps, yes, sir. There are ways that document. No, we
4 don't know where he was at 24 hours a day.

5 MR. PERKINS: Okay. I don't have any other
6 questions.

7 REDIRECT EXAMINATION

8 BY MR. HARRISON:

9 Q. So under Mr. Perkins' hypothetical, a drug dealer
10 situation, I guess that person would just be lying about
11 having thoughts of killing someone. Why would you hide --
12 why would you admit to having thoughts of killing someone,
13 as a dope dealer in this hypothetical situation, yet lie as
14 to whether you're employed?

15 A. I don't draw that conclusion myself that you can
16 make a leap from being unemployed and being a dope dealer to
17 admitting you had thoughts of killing someone. I don't see
18 the connection myself.

19 Q. That seems like the worst thing to lie about, when
20 you admit to having thoughts of killing people.

21 A. Yes, sir.

22 MR. HARRISON: Could I have just a moment,
23 Judge?

24 THE COURT: Yes, sir.

25 MR. HARRISON: May I approach the witness,

1 Judge?

2 THE COURT: Yes, sir.

3 Q. (By Mr. Harrison) I believe this is Bates stamped
4 253, it looks like. To yourself, would you read this
5 notations there, to yourself?

6 A. (Complies.)

7 Q. Mr. Patzke, do you have information regarding
8 whether Tracy Beatty lived at home during the -- with his
9 mother, Carolyn Click, during the month of November 6th,
10 2003, or whether he was living elsewhere?

11 A. The record indicates that his mother had indicated
12 he was residing elsewhere.

13 Q. Had she called in with that information?

14 A. Yes, sir.

15 Q. Thank you.

16 MR. HARRISON: Pass the witness.

17 THE COURT: Mr. Perkins?

18 RECROSS-EXAMINATION

19 BY MR. PERKINS:

20 Q. Did you talk to her?

21 A. No, sir.

22 Q. Did you make these notes that the State's showing
23 you?

24 A. No, sir.

25 Q. So you're relying on information that was

1 supposedly told to somebody, not you, that was supposedly
2 written down by somebody who knew, who supposedly heard it
3 from somebody else?

4 A. I'm referring to the official record, sir.

5 Q. Okay. The official record is that somebody, not
6 you, wrote down something which you have absolutely,
7 positively no personal knowledge of. Is that safe to say?

8 A. I have no knowledge of it, yes, sir.

9 Q. No personal knowledge?

10 A. No personal knowledge of it.

11 Q. At all?

12 A. That's correct, sir.

13 Q. Would you say that that's the most reliable
14 information you've ever come across? Is it common for you
15 to come in here and testify about stuff that you have
16 absolutely no personal knowledge of?

17 A. As a keeper of records, yes, sir, I've testified
18 in court and presented records.

19 Q. So the answer is that's common for you to come in
20 and testify about stuff that you have absolutely no personal
21 knowledge of?

22 A. I don't understand "common," but I have done that
23 task, sir, as a keeper of records.

24 Q. Okay. Where is the person that has the knowledge,
25 that has that personal knowledge?

1 A. I'm not sure, sir. I'm here.

2 MR. PERKINS: Okay. I don't have any other
3 questions.

4 THE COURT: Is that about it?

5 MR. HARRISON: Subject to re-call, Your
6 Honor.

7 THE COURT: All right. So you will be
8 subject to re-call. You will remain under the Rule of
9 Witnesses. If you will just be sure that the District
10 Attorney's Office can get in touch with you in case the
11 State or Defense will need to call you. Thank you, sir.

12 (The witness leaves the courtroom.)

13 THE COURT: Who will you have next,
14 Mr. Bingham?

15 MR. BINGHAM: Judge, we'll have Stacey
16 Killough.

17 (The witness enters the courtroom.)

18 THE COURT: Ms. Killough, just come around to
19 the witness chair.

20 Were you sworn in this morning?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Just pull the chair
23 up and adjust the microphone. Speak into the microphone,
24 please. Thank you.

25 Go ahead, Mr. Bingham.

1 MR. BINGHAM: Thank you.

2 STACEY KILLOUGH,
3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BINGHAM:

6 Q. Ma'am, if you would, introduce yourself to the
7 jury and state your name.

8 A. I am Stacey Killough.

9 Q. Okay. Could you spell it for the court reporter?

10 A. S-T-A-C-E-Y, K-I-L-L-O-U-G-H.

11 Q. Ms. Killough, where do you reside?

12 A. 1602 West End Schlueter Loop, No. 12, Killeen,
13 Texas.

14 Q. Killeen, Texas.

15 And back in November of 2003, where did you
16 reside?

17 A. 403 Hillcrest in Malakoff.

18 Q. Now, do you know an individual by the name of
19 Tracy Beatty?

20 A. Yes, I do.

21 Q. Do you see him in the courtroom today?

22 A. Yes, I do.

23 Q. Could you point to him and identify an article of
24 clothing worn by him?

25 A. Blue suit (pointing).

1 Q. Okay. Did you point? I'm sorry?

2 A. Yes.

3 MR. BINGHAM: Your Honor, let the record
4 reflect the witness identified and pointed to an article of
5 clothing worn by the defendant and pointed to the defendant.

6 THE COURT: The record will reflect the
7 witness identified the defendant.

8 Q. (By Mr. Bingham) How long have you known Tracy
9 Beatty?

10 A. 34 years.

11 Q. How are you related to him?

12 A. That's my cousin.

13 Q. Okay. And how would you characterize your
14 relationship? Well, let me back up before that.

15 You are cousins through your --

16 A. My aunt was Carolyn Click.

17 Q. Okay. Now, how would you describe your
18 relationship with Carolyn Click? How frequently did you see
19 her?

20 A. Family reunions, periodically through the years.

21 Q. Had you ever been to her residence in Whitehouse?

22 A. She lived there ten years, yes.

23 Q. How long did you know her to live at that
24 residence?

25 A. Ten years.

1 Q. Had she lived there mostly alone, or had there
2 been other people live there with her at times?

3 A. Mostly alone.

4 Q. Was there ever a James Everett Click?

5 A. Not that I recall.

6 MR. BINGHAM: May I approach?

7 THE COURT: Yes.

8 Q. (By Mr. Bingham) Was she ever -- in the time that
9 you knew her to live there in the ten years, was she ever
10 married to -- was she ever married in that time that you
11 know?

12 A. Yes.

13 Q. Who was she married to?

14 A. I only knew him as Mr. Click.

15 Q. Okay. Mr. Click. And did you ever know him to
16 live at that residence?

17 A. No, sir.

18 Q. At the time they were married, did he reside
19 somewhere else?

20 A. Yes, sir.

21 Q. Did their marriage last very long?

22 A. That I do not know.

23 MR. BINGHAM: May I approach, Judge?

24 THE COURT: You may.

25 Q. (By Mr. Bingham) Let me show you this vehicle

1 here. Do you recognize this as State's Exhibit No. 1? Do
2 you recognize that?

3 A. Yes, I do.

4 Q. And who's vehicle is that?

5 A. Carolyn's.

6 Q. And when you say "Carolyn's," is that Carolyn
7 Click?

8 A. Yes.

9 Q. Now, how long did you know her to have that
10 vehicle?

11 A. I know of two years.

12 Q. Two years, at least, that she had it?

13 A. At least.

14 Q. In her opinion, was she protective of that vehicle
15 or not protective?

16 A. Oh, yes, very protective.

17 Q. Very protective?

18 A. Very protective.

19 Q. Had you ever known her to allow anyone to drive
20 that vehicle?

21 A. Oh, no.

22 Q. If you ever saw that vehicle and she wasn't in it,
23 would you be -- would that ring a bell with you?

24 A. That would raise suspicion.

25 Q. Did you ever hear the defendant to ask to drive

1 the vehicle?

2 A. Once.

3 Q. Okay. Now, did Carolyn Click allow him to?

4 A. No.

5 Q. So you had actually heard the defendant request
6 Carolyn Click and say -- how did he -- what did he call her?

7 A. Mom sometimes. It was mostly Carolyn.

8 Q. What did you hear the defendant ask her?

9 A. "May I drive the car?"

10 Q. Okay. And what was her response?

11 A. No.

12 Q. Okay. So that was not inconsistent?

13 A. No.

14 Q. Now, do you recall about when that was?

15 A. The end of October, I believe.

16 Q. So this was the end of October, 2003?

17 A. Yes, sir.

18 Q. Where did that occur?

19 A. At my sister's house in Athens, Texas.

20 Q. What's your sister's name, for the record?

21 A. Tonya Walker.

22 Q. Tonya Walker. Now, do you recall the defendant
23 coming to your house in November?

24 A. Yes.

25 Q. Do you recall the date?

1 A. The 25th of November.

2 Q. 2003?

3 A. 2003. I'm sorry.

4 Q. Do you recall who was there at the time he showed
5 up?

6 A. My children. I have three, and my adopted
7 daughter, Christina Ogeda.

8 Q. How do you spell that?

9 A. C-H-R-I-S-T-I-N-A, O-G-E-D-A.

10 Q. Now, when he arrived on the 25th, November 25th
11 of 2003, do you know the exact time?

12 A. Exact, no. A rough estimate, it was before dark,
13 I would say, between 5:00 or 5:30 on that particular day.

14 Q. What were you giving your children -- what were
15 you doing at the time he arrived?

16 A. At the time, I was getting my kids ready to go to
17 their dad's for Thanksgiving. It was his weekend. We were
18 divorced. He informed me that he would be there around
19 8:00, 8:30 to pick them up and take them to Rowlette, his
20 mother's house, for Thanksgiving.

21 Q. And when the defendant showed up, were you
22 expecting him to show up?

23 A. No.

24 Q. And when he showed up, what vehicle was he
25 driving?

1 A. He was driving Callie's car.

2 Q. Now, who is Callie?

3 A. Carolyn Click.

4 Q. Now, Carolyn Click was Tracy Beatty's mom?

5 A. Yes.

6 Q. The defendant's mom. And you knew her or called
7 her Callie?

8 A. Callie.

9 Q. Was that yours alone, or did many people call her
10 that?

11 A. Everybody called her Callie.

12 Q. Now, when you saw the defendant show up in her car
13 without her, what did you think?

14 A. I answered the door, and I looked out and I saw
15 her car. And the first thing out of my mouth was, "Where is
16 Carolyn?"

17 Q. Was that again because of --

18 A. Suspicion.

19 Q. Okay.

20 A. And I know she's very protective of her vehicle.

21 Q. Now, when you asked -- because here's her vehicle,
22 the defendant is driving it, and you've already heard once
23 him asking her to go. What did you ask him? Do you recall
24 what -- do you recall you asked where Carolyn was?

25 A. I asked where Carolyn was.

1 Q. What was his response?

2 A. She went out of town with a friend.

3 Q. Did he say about how long before she would be
4 back?

5 A. Couple of weeks.

6 Q. Now, this is actually -- this is November 25th?

7 A. Yes, sir.

8 Q This is November 25th, and at the time -- had you
9 driven from your house to Carolyn's house?

10 A Have I?

11 Q Yeah.

12 A No.

13 Q How long does it take, if you know?

14 A Roughly 45 minutes.

15 Q Okay. From where you were living back then?

16 A Yes.

17 Q I'm not talking about Killeen, from where you were
18 living back then.

19 A Right.

20 Q About 45 minutes. And this was around 5:00 or
21 5:30?

22 A Yes, sir.

23 Q Now -- so you could get from Carolyn's house at
24 4:30 to your house by 5:30?

25 A Easily.

1 Q What? I'm sorry.

2 A Easily.

3 Q Okay. Now, did he ever mention anything to you on
4 the -- November 25th, 2003, that Carolyn Click was dead?

5 A No.

6 Q Did he ever mention anything about seeing her dead
7 or himself killing her?

8 A No.

9 Q Now, let me show you --

10 MR. BINGHAM: May I approach the evidence?

11 THE COURT: Yes.

12 Q (By Mr. Bingham) Let me show you State's
13 Exhibit 18 right here. Do you know who this is portrayed in
14 State's Exhibit 18?

15 A That looks like Carolyn.

16 Q So it would be your opinion that the person in
17 State's Exhibit 18 is who?

18 A My aunt.

19 Q Okay. And when you say "Carolyn," Carolyn Click?

20 A Carolyn Click.

21 Q Okay. Now, do you recognize -- let me show you
22 State's Exhibit 4. Do you recognize that?

23 A It almost looks like Carolyn Click's backyard.

24 Q Okay. That -- the mobile home in Whitehouse?

25 A Yes.

1 Q And you've never seen the photographs of the
2 house, have you?

3 A No, sir.

4 Q Let me show you State's Exhibit Number 11 and ask
5 you if you recognize that.

6 A That's the front.

7 Q Front of the --

8 A Of Carolyn Click's house.

9 Q Carolyn Click's house.

10 Now, when the defendant showed up on
11 November 25th, 2003, sometime between 5:00 and 5:30, could
12 you -- were you able to determine whether or not he had
13 consumed alcohol on that day?

14 A I smelled it, but -- I didn't get up on him and
15 engulf it, no, but I smelled it, yes.

16 Q Did he appear to have consumed alcohol, or in your
17 opinion, would he have been intoxicated? Were you able to
18 judge that based on his mannerisms?

19 A I don't feel that he was intoxicated that -- at
20 that time.

21 Q Okay. That maybe he had drank some --

22 A Right.

23 Q -- but that he did not appear intoxicated?

24 A Right.

25 Q All right. Now, did you invite -- how long did

1 the defendant stay -- let's start there -- on November 25th,
2 2003?

3 A Probably five to ten minutes. No more than that.
4 Because I was trying to get my kids ready to go to their
5 dad's, and I was right in the middle of packing their bags
6 and getting their medication together and whatnot.

7 Q Okay. What did you ask the defendant to do?

8 A Could he come back at another time.

9 Q And did he leave?

10 A Yes.

11 Q And if he arrived there at between 5:00 and 5:30,
12 he stayed about ten minutes and left?

13 A Right.

14 Q Do you recall what date he returned?

15 A On November 27th.

16 Q Was that Thanksgiving?

17 A Thanksgiving evening.

18 Q What time did you --

19 A It was dark.

20 Q It was dark then?

21 A Yes.

22 Q When the defendant arrived, do you recall how he
23 arrived?

24 A He was in Carolyn Click's car.

25 Q Now, at this point, you've seen him now twice in

1 Carolyn Click's car without Carolyn Click.

2 A Right.

3 Q And he's told you that she's out of town.

4 A Right.

5 Q When he shows up the second time, do you
6 notice any -- anything in the defendant's -- or do you see
7 the defendant pull anything out of his pockets?

8 A That evening, yes. I was very ill, and my
9 ex-husband was going to go get me a small bottle of whiskey
10 to make a hot toddy to try to break some phlegm up. Tracy
11 needed to go get some beer, is what he told me, was he
12 needed -- he was running out of beer, and he needed to get
13 some more and --

14 Q Tracy, the defendant?

15 A The defendant.

16 Q Okay.

17 A He said, "Well, I'll go with him or he can ride
18 with me," and my ex-husband and Tracy left to go to the
19 liquor store.

20 Q Okay. Whose car did they leave in?

21 A Carolyn Click's.

22 Q Now, what type of -- what size bottle did you want
23 to buy?

24 A Just a small one. Just --

25 Q Okay.

1 A I don't know the sizes. I'm not a drinker.

2 Q Okay. And how were you to pay?

3 A My ex-husband bought it.

4 Q Okay. Did -- when did you see Tracy Beatty pull
5 something out of his pocket?

6 A At my house on Hillcrest in Malakoff.

7 Q What did you see the defendant pull out of his
8 pocket on November 27th that --

9 A There was a wad of cash.

10 Q Okay.

11 A I mean, it was folded in half, but there was a
12 stack probably an inch to an inch and a half.

13 Q Okay. So when you flipped the wad over, it was an
14 inch to an inch and a half thick folded?

15 A Folded, yes.

16 Q Okay. Describe for the jury the denominations of
17 currency that you saw in that wad of cash?

18 A There were -- I know there were several one
19 hundred dollar bills.

20 Q Okay.

21 A There was a couple of twenties.

22 Q Okay.

23 A And maybe five or ten ones.

24 Q Okay. Now --

25 MR. BINGHAM: May I approach the witness,

1 Judge?

2 THE COURT: Yes.

3 Q (By Mr. Bingham) Now, let me show you State's
4 Exhibit 22. Do you know who that is?

5 A Yes.

6 Q Okay. Who's that?

7 A Tracy.

8 Q Okay. Is this how Tracy appeared to you on
9 November 25th and 27th?

10 A Yes.

11 Q Now, did he have the same physical appearance in
12 State's Exhibit 22 that he -- I mean, is this how he looked?

13 A Yes.

14 Q Okay. Now, do you know -- were you surprised to
15 see a wad of money folded over that was an inch to an inch
16 and a half tall knowing that he had a couple of -- at least
17 a couple of hundreds? What -- did you see any other
18 denominations?

19 A No, sir.

20 Q Okay. Of course, a couple of hundreds would be a
21 long ways from equaling --

22 A Exactly.

23 Q Okay. And Tracy just pulled -- I mean, how did it
24 come to come out of his pocket; do you recall?

25 A If I'm not mistaken, he said something about

1 having to get gas that evening as well because he was going
2 to go see his daughter in Dallas, and my ex-husband asked
3 him, "Well, I don't know if I have the money for all of
4 this" or something, and Tracy said, "Well, I've got my own
5 money. You don't have to worry about it."

6 Q Okay. What did you think when you saw that inch
7 and a half wad of money with a couple of hundreds?

8 A I was startled because I knew that Tracy wasn't
9 working.

10 Q Now, the -- how long has the defendant gone in
11 Carolyn Click's car with his wad of money and your husband?
12 How long are they gone?

13 A 20 or 30 minutes.

14 Q Okay. And when they come back, what have they
15 purchased?

16 A Tracy bought some beer, he bought a small bottle
17 of whiskey, and my ex-husband bought a small bottle of
18 whiskey for me.

19 Q Okay. How long did Tracy -- how long did Tracy
20 Beatty stay that night?

21 A Oh, he stayed for a while that evening.

22 Q Did you see the amount of liquor that Tracy Beatty
23 consumed on November 27th, 2003?

24 A Did I watch him drink it? No, sir, I did not. I
25 know that he was -- to my judgment, he was drunk, and I

1 figured that he would leave the house driving, and that
2 scared me.

3 Q Okay. Did he leave the house?

4 A Yes.

5 Q Okay. And did he come back?

6 A Yes.

7 Q How long was he gone before he leaves and comes
8 back?

9 A He was gone about 20 or 30 minutes, and then he
10 came back.

11 Q When he came back, what did he say to you?

12 A He said, "I think I'm too drunk to drive. I took
13 out a couple of signs."

14 Q Okay. So he took Ms. Click's car, got back on the
15 road drunk, took out a couple of signs, and came back to
16 your house?

17 A Yes, sir.

18 Q Okay. Now, what did you -- what did you say to
19 the defendant at that point?

20 A I said, "Come on in, and I'll grab you a blanket
21 and a pillow, but let me have the keys."

22 Q Okay. Did he spend the night there?

23 A Yes, he did.

24 Q Now, did you -- was he there when you woke up the
25 next day?

1 A Yes, he was.

2 Q What time did you see him the next morning?

3 A It was between 8:30 and 9:00.

4 Q Okay. And this is on November 28th?

5 A The 28th of 2003.

6 Q Okay. And when he woke up, what was he doing?

7 A He had beer in his hand.

8 Q Okay. So at 9:00 o'clock the next morning, he has
9 a beer in his hand, and what do you say to him?

10 A I made a comment about, "Isn't it kind of early
11 for that already?"

12 Q Okay. Now, did you stay at your house with the
13 defendant?

14 A All day, no.

15 Q Okay. What time did you leave the house?

16 A I left about 9:15, 9:30.

17 Q Okay. And where were you going?

18 A I was on my way to the emergency room.

19 Q How long would you say you were gone once you left
20 your house before you returned to your house?

21 A I would say I was at the emergency room probably
22 four to five hours.

23 Q Okay. Did the defendant leave your house -- or
24 did anyone remain at the house with the defendant?

25 A Yes.

1 Q Who?

2 A My 13-year-old son.

3 Q Okay. Did you give the defendant explicit
4 instructions?

5 A "Don't take my son anywhere. Don't leave this
6 house. You've been drinking already."

7 Q Okay. So you think that he's going stay at the
8 house with your son?

9 A Yeah. I was hoping he would, yes.

10 Q Okay. Did he follow your instructions?

11 A No, he did not.

12 Q What did he do?

13 A He went to my sister's house. He went to put gas
14 in the car.

15 MR. PERKINS: Judge, can I take the witness
16 on voir dire for the purpose of a possible objection?

17 THE COURT: Yes.

18 VOIR DIRE EXAMINATION

19 BY MR. PERKINS:

20 Q Is it Ms. Killough?

21 A Killough (pronouncing).

22 Q Killough?

23 A Yes, sir.

24 Q Ms. Killough, this may seem like kind of an
25 obvious question, but if you weren't there, how do you know

1 what Tracy Beatty did?

2 A My son told me.

3 Q Okay.

4 MR. PERKINS: Then I'm going to object to
5 hearsay, Judge, and ask for an instruction to disregard.

6 THE COURT: Well, I sustain the objection as
7 to any response that is based on hearsay, what she was told,
8 and I'll instruct the jury to disregard any response that is
9 based on what she was told by her son.

10 MR. BINGHAM: I'll rephrase it.

11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. BINGHAM:

13 Q Did you talk to the defendant about it?

14 A Yes.

15 Q When you got home and you found out some things
16 you weren't happy about, did you confront the defendant?

17 A Yes, I did.

18 Q What did you say to him?

19 A I asked him why he decided to disregard what I
20 told him, and he was jeopardizing my 13-year-old son's life.

21 Q Did you confront him about where he had gone?

22 A Yes, sir.

23 Q Where did you tell him you knew he had went?

24 A I told him that I knew he had went to Wal-Mart --
25 or to -- well, across from Wal-Mart, which is a Texaco gas

1 station in Athens, I know that he went to my sister's house,
2 and I know he went to Brookshire's to get something to eat
3 and also to Sack-a-Burger.

4 Q Okay. And when you confronted him about, "I know
5 where you've been, I know who you went with, that you took
6 my son, and I told you not to," what did the defendant say?

7 A He said, "I'm not too drunk to drive," and it was
8 okay.

9 Q Okay. Now --

10 MR. BINGHAM: Can I have one second, Judge?

11 THE COURT: Yes.

12 Q (By Mr. Bingham) So if I made the comment, "Well,
13 you've never -- there's no evidence that the defendant could
14 not use Carolyn Click's car, you've actually heard the
15 defendant request it and Carolyn Click say no?

16 A Correct.

17 Q Now, let me ask you this.

18 MR. BINGHAM: Can I have one second, Judge?

19 THE COURT: Yes.

20 Q (By Mr. Bingham) Let me show you State's
21 Exhibit 3 -- excuse me -- 23. Do you recognize that?

22 A Yeah.

23 Q What is State's Exhibit Number 23?

24 A Carolyn Click's cross ring.

25 Q Okay. How many times would you say you've seen

1 this ring on the finger of Carolyn Click?

2 A Three times that I know of.

3 Q All right. And would you consider this to be a
4 ring that is unique?

5 A Yes.

6 Q Now, do you know how long she's had that ring?

7 A No, sir.

8 MR. BINGHAM: Your Honor, may -- I'm sorry.
9 I'll tender State's Exhibit 23 to Mr. Perkins and Mr. Hawk.

10 (At the bench, on the record.)

11 MR. PERKINS: Again, Judge, at this point in
12 time, I'm going to object to State's Exhibit 23, it's being
13 more prejudicial than probative. They have excised a
14 portion but not a sufficient portion in our minds to make
15 that -- there's a -- well, the Court can see it.

16 We're talking about a ring, the photograph of
17 a ring that's apparently still on the body of Carolyn Click.
18 I'm sure that the State could have and probably does have in
19 its possession the actual ring itself to proffer into
20 evidence.

21 If they choose to proffer this one, which is
22 still on the corpse of Carolyn Click, through this witness,
23 we object to it under 403 and object to its relevancy as to
24 try to publish through this witness this particular State's
25 Exhibit Number 23.

1 THE COURT: Your response?

2 MR. BINGHAM: Judge, State's Exhibit 23 is
3 the -- is, in fact, a ring -- is, in fact, a ring that was
4 found on the body of Carolyn Click. It's relevant. We have
5 excised a large portion of the actual hand of Carolyn Click,
6 but it's very relevant because this is a unique ring.

7 This witness can testify that she's seen this
8 ring on the hand of Carolyn Click, and, in fact, this ring
9 was found on the body of the individual taken out of the
10 grave behind Carolyn Click's house. It's relevant for
11 purposes of identification of that body, and we have excised
12 or taken off a -- more than -- or at least half of this
13 photograph.

14 THE COURT: The Court finds that the
15 photograph is relevant for -- the Court finds the photograph
16 is relevant for identification purposes of the ring by the
17 witness as being the victim, Carolyn Click's, ring.

18 The Court applies the balancing test and
19 finds the appropriate probative value outweighs the
20 prejudicial effect, and State's Exhibit Number 23 -- your
21 objection is overruled. State's Exhibit 23 is admitted as
22 it appears.

23 The State has excised a significant portion
24 of the photograph out of how it originally appeared and cut
25 it down to an area just showing the ring, of course, on the

1 finger with a measuring device and the identification number
2 that the -- to lay out where the autopsy was done.

3 Therefore, the Court will overrule your
4 objection.

5 (End of bench conference.)

6 MR. BINGHAM: We would offer State's
7 Exhibit 23.

8 THE COURT: State's Exhibit 23 will be
9 admitted.

10 Q (By Mr. Bingham) Do you recognize this to be a
11 ring belonging to Carolyn Click?

12 A Correct.

13 Q Would you consider this to be a ring that is
14 unique?

15 A Yes.

16 Q Now, you had seen this ring on the hand of Carolyn
17 Click on --

18 A Three different occasions.

19 Q Three different occasions.

20 MR. BINGHAM: Judge, we'll pass the witness.

21 Thanks, 'ma'am.

22 THE COURT: Mr. Perkins?

23 MR. PERKINS: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. PERKINS:

1 Q Ms. Killough, hi. My name is Robert Perkins. And
2 Other than us visiting a few minutes ago briefly, we haven't
3 talked or met before, have we?

4 A No.

5 Q Ms. Killough, what I want do is I want to go back
6 over some of the stuff that you testified to and kind of see
7 if I can get some clarification --

8 A Okay.

9 Q -- as to exactly what it is that you say that you
10 witnessed, okay?

11 I want to start off by asking you, do you
12 think your memory of these events is better now than it was
13 back say last December?

14 A Are they better now? No. They're the same.

15 Q Your memory now is the same as it was back last
16 December?

17 A Yes.

18 Q Ms. Killough, you had an opportunity two days shy
19 of Christmas last year to meet with Smith County Sheriff's
20 Deputy Steve Chaney. Do you remember meeting with him and
21 giving a handwritten statement?

22 A Yes, sir.

23 Q And actually, my understanding is that you wrote
24 it out yourself; is that right?

25 A Yes, sir.

1 Q They gave you some blank pages and let you write
2 as little or as much as you wanted to; is that right?

3 A Yes, sir.

4 Q I'm sorry. I --

5 A Yes, sir.

6 Q Okay. And this was contemporaneously or at the
7 same time -- let me quit using big lawyer words. This was
8 about the same time as the disappearance of your aunt was
9 being solved --

10 A Correct.

11 Q -- is that about right?

12 A Yes, sir.

13 Q The questions that I have for you -- would you
14 agree with me that your recollection today is different than
15 your recollection back last December when you talked to
16 Steve Chaney?

17 MR. BINGHAM: Objection. Asked and answered.

18 MR. PERKINS: Judge, I'll withdraw it.

19 THE COURT: It's withdrawn.

20 Q (By Mr. Perkins) Are you telling the jury the same
21 thing you told Steven Chaney?

22 A Yes, sir.

23 MR. BINGHAM: Judge, I'm going to object to
24 the form of that question. That is an improper question.

25 It's not an impeachment question. Doesn't comply with the

1 Texas Rules of Evidence, and I object to the form of the
2 question.

3 THE COURT: Rephrase, Mr. Perkins.

4 MR. PERKINS: I'll clear it up, Judge.

5 THE COURT: Clear it up.

6 Q (By Mr. Perkins) Ms. Killough, you wrote a
7 two-page statement, didn't you.

8 A Yes, sir.

9 Q And you would agree with me that nowhere in that
10 two-page statement is there a single word about you ever
11 having heard Carolyn Click deny Tracy Beatty the right to
12 drive her car. There's not one mention of that in there, is
13 there?

14 A No, sir.

15 Q But you recognize the significance of it now that
16 we're in trial, don't you?

17 A No, sir.

18 Q You don't?

19 A No.

20 Q So you've never visited with anybody from the
21 State of Texas about whether or not you ever heard Carolyn
22 Click deny him access to that car? Is that what you're
23 telling me and this jury over here?

24 A When I wrote that statement, that's what I was --
25 I was writing the truth. That's how I remember it.

1 Q That's not the question I asked you, ma'am.

2 The question I asked you was, did you visit
3 with anybody from the State over here, an investigator with
4 the District Attorney's Office, an assistant district
5 attorney, anybody in the District Attorney's Office about
6 Carolyn denying Tracy Beatty use of the car?

7 A They talked to me Friday.

8 Q Friday did they talk to you about that?

9 A They asked me what happened, and I told them.

10 Q Okay. And so Friday you suddenly remembered this
11 conversation that you failed to put in your statement that
12 you gave to Steve Chaney December the 23rd of 2003. Is that
13 what we're to understand?

14 A I omitted it, yes.

15 Q You omitted it?

16 A Yes.

17 Q Why did you omit it then, but now you've suddenly
18 remembered it at trial?

19 A At the time I wrote that statement, when Steve
20 Chaney -- I think you said his name was -- there was 15
21 detectives sitting there, and I had cadaver dogs in my yard.
22 And they asked me to write a statement, so I wrote a
23 statement.

24 Q Okay. You didn't think it was important then?

25 A At the time I was trying to put everything down on

1 paper that I could remember at that time with them going
2 through my property.

3 Q Okay. And you say that this conversation, "May I
4 drive the car," and Carolyn Click saying no was not
5 significant to you at the time that they were searching for
6 Carolyn Click's body in your yard?

7 A No, I didn't.

8 Q Do you understand, Ms. Killough, that Tracy Beatty
9 is charged with capital murder, the basis of the capital
10 murder being robbery and burglary? Has that been explained
11 to you by somebody?

12 A I was explained that on Friday.

13 Q Okay. This is the same time you met with the
14 District Attorney's Office Friday?

15 A Correct.

16 Q And at that time, for the first time, you informed
17 them of this conversation that you overheard between Carolyn
18 Click and Tracy Beatty where he asked --

19 A "May I drive the car?"

20 Q -- "May I drive the car," and she says no?

21 A Correct.

22 Q Ms. Killough, let me ask you about a couple of
23 other things.

24 You indicate today, if I understand -- again,
25 correct me if I'm wrong about this -- that on November the

1 25th, that Tracy Beatty showed up at your house at about
2 5:00 to 5:30 in the afternoon.

3 A Correct.

4 Q Before dark.

5 A Correct.

6 Q Okay. You indicate that it takes about 45 minutes
7 to drive between your house -- which I believe was in
8 Malakoff?

9 A Malakoff.

10 Q Am I right about that, Malakoff?

11 A Right.

12 Q And Whitehouse, Texas.

13 A Correct.

14 Q Okay. He's there by 5:00 to 5:30.

15 A Correct.

16 Q Can't say exactly, but --

17 A Close enough.

18 Q -- that's the window that we're talking about.

19 Today you say that when he showed up, you do
20 not believe he was intoxicated.

21 A At the time that he arrived on the 25th, I don't
22 feel that he was intoxicated at that time.

23 Q Ms. Killough, didn't you tell Steve Chaney that at
24 the time that he drove up on the 25th, that in your own
25 handwriting, you wrote, "And he was extremely drunk"?

1 A If that's what I put on there.

2 Q Well, which one is the truth?

3 A I don't feel that on the 25th, he was drunk. I
4 believe on the 27th he was drunk.

5 Q Okay. Then when you wrote the statement, which
6 was also a voluntary statement under oath, to Steve Chaney,
7 why did you put in your statement that you wrote
8 December the 23rd of 2003, that at the time that he showed
9 up showed up, he was extremely drunk?

10 A When I was writing the statement, there was a lot
11 going on, and I could not even remember when Thanksgiving
12 was at that time. And I asked Mr. Chaney, on the 25th, what
13 day was that on, because I can do Monday, Tuesday, Wednesday
14 better than I can the 25th, 26th, 27th.

15 Q Okay. So what you're saying is, today, when you
16 come in here and testify, he showed up at 5:00 to 5:30, and
17 he was not drunk, but back closer in time to when it
18 actually happened, that's -- instead of it being like, you
19 know -- today is what? August of 2004?

20 A Right.

21 Q So not quite, but nearly a year ago, in December
22 of 2003, when you wrote this statement about something that
23 supposedly happened a month before, you put down that he was
24 extremely drunk.

25 A He was very drunk on the 27th.

1 Q Okay. I want to talk to you about the 27th for a
2 second --

3 A Okay.

4 Q -- but I'm not through with the 25th yet.

5 A Okay.

6 Q You indicate today, when you come in and testify,
7 that when you saw Callie's car, and Callie wasn't there,
8 that you were extremely concerned. Am I right about that?

9 A I was questionable, yeah.

10 Q Okay. And the first thing that you asked was,
11 "Where is Carolyn?"

12 A Right.

13 Q Would you agree with me that there's not one word
14 about any of that in your statement to Steve Chaney?
15 There's not one word in there.

16 A Would I agree? Yes.

17 Q So that wasn't significant to you either.

18 A The time that I wrote that statement, they asked
19 me specific -- a specific situation, such as December when
20 he was arrested from my house.

21 Q I'm not talking about that, ma'am. I'm talking
22 about them handing you blank pieces of paper and letting you
23 write it out. And you would agree with me that despite the
24 fact that you had the opportunity to write down, "He showed
25 up without Carolyn, and I asked where is Carolyn, and he

1 told me out of town with friends, she'll be out of town for
2 a couple of weeks," even though you will come into court and
3 testify to that today, there is not one word about any of
4 that in the statement that you gave to the police less than
5 a month after these events. Is that true or not true?

6 A That's true.

7 Q Let me keep talking to you about the 25th. Today
8 you said that you were very ill on the 25th. When he showed
9 up, you were busy trying to get the kids packed up, because
10 their father was taking them somewhere for Thanksgiving or
11 something; is that right?

12 A Correct.

13 Q And that you asked Tracy Beatty to leave and to
14 come back another time.

15 A Yes.

16 Q That's what you testified to today?

17 A Yes.

18 Q Isn't it true, ma'am, that in the statement that
19 you gave to Lieutenant Chaney that you informed Lieutenant
20 Chaney at that time that you begged him -- being him, being
21 Tracy Beatty -- to stay the night, but he was adamant about
22 going to his daughter's house?

23 A On the 27th, not on the 25th.

24 Q Did you put anything -- let me just clear this up
25 right now. Did you put one single solitary word in your

1 entire statement about ever seeing Tracy Beatty on the 27th?

2 A Did I put it in my statement? No.

3 Q But today you've come in and told this jury that
4 you had another encounter with him, not on the 25th but on
5 the 27th as well?

6 A Correct.

7 Q So in your sworn statement to Lieutenant Chaney
8 where you said that you begged for him to stay on the 25th,
9 would you agree with me that that directly contradicts what
10 you testified to today, that you asked him to leave and come
11 back another time?

12 A Yes, sir, it does contradict.

13 Q Let me talk to you about another detail that
14 apparently has come back to you between then and now. Let's
15 talk about this wad of cash for a second.

16 A Okay.

17 Q First of all, you would agree with me that there's
18 not one mention in the statement that you gave to Lieutenant
19 Chaney a month after these events unfolded about ever seeing
20 a wad of cash?

21 A I mentioned it to him, but I did not put it in my
22 statement.

23 Q You mentioned it to him?

24 A Yes, I did.

25 Q But just didn't put it in your statement?

1 A Correct.

2 Q So despite the testimony today that you were -- I
3 believe the word you used was "shocked" to see Tracy Beatty
4 with a 1 to 1-1/2 inch roll of money or a wad of money or a
5 fold of money, whatever you want to call it, it wasn't
6 significant to you enough at the time less than a month
7 after these events to include it in the written statement
8 that you had a chance to make? There wasn't one word about
9 any money in there, was there?

10 A No, sir.

11 Q There wasn't one word in there about a couple of
12 hundreds, was there?

13 A No, sir.

14 Q Not one word in there about a bunch of \$20s, was
15 there?

16 A No, sir.

17 Q Not one word in there about five to ten ones
18 folded up, was there?

19 A No, sir.

20 Q Not one word in there about, "I've got it, I've
21 got my own money," was there?

22 A No, sir.

23 Q Not one word in there about the trip to the liquor
24 store, was there?

25 A In the statement, no, sir.

1 Q Let me talk to you about another detail. You
2 indicate today in your testimony that you were shocked
3 because you knew that Tracy Beatty wasn't working.

4 A Correct.

5 Q According to your statement to Steve Chaney, and
6 clear me up on this. Before you saw Tracy Beatty on the
7 25th, when was the time that you saw him before that?

8 A October.

9 Q October?

10 A Yes, sir.

11 Q So from October to -- what are we talking about --
12 November the 25th. When was it in October you saw him?

13 A I'm not sure.

14 Q Where was it that you saw him?

15 A At my sister's house.

16 Q And so is this information that you say you had
17 about that you know that he's not working, did you hear that
18 from somebody?

19 A No, sir.

20 Q Are you keeping tabs on whether or not he's
21 working? I'm kind of mixed up here.

22 A No, I'm not keeping tabs on him.

23 Q Nobody told you he wasn't working, and you don't
24 know that for yourself. So I guess the only question
25 remains is how could you possibly know that he was or was

1 not working?

2 A Tracy told me the day he come in on the 25th.

3 Q On the 25th?

4 A November 25th.

5 Q Would you agree with me that there's not
6 anything -- well, first of all, there wasn't anything in
7 your testimony today about him telling you that, was there?

8 A No, sir.

9 MR. BINGHAM: Judge, I'm going to object. I
10 didn't ask her that question. If he said anything on the
11 25th about whether or not he was working or how she knew.

12 THE COURT: I'll overrule the objection.
13 Mr. Bingham, you can come back on redirect.

14 Go ahead.

15 MR. PERKINS: Thank you, Judge.

16 Q. (By Mr. Perkins) Okay. When the State was asking
17 you questions, you didn't indicate that's where you knew it
18 from. Would you agree with that?

19 A No, sir.

20 Q You wouldn't agree with that?

21 A No, sir.

22 Q In your statement to Steve Chaney that you gave
23 December 23rd of 2003, you didn't mention that.

24 A You're right, I didn't.

25 Q You didn't mention the money.

1 A No, sir, I didn't.

2 Q Okay. Let me talk to you about one other. This
3 trip with your -- when you left, you say today that on
4 November the 27th, you were sick?

5 A Yes, sir.

6 Q Now, was that the 25th or the 27th?

7 A The 27th.

8 Q That's what you say today. You were sick and went
9 to the emergency room?

10 A On the 28th, I went to the emergency room. I
11 started getting sick on the 24th.

12 Q On the 28th, you went to emergency room?

13 A Yes, sir.

14 Q And when you came back -- actually, before you
15 left, you told Tracy Beatty, "Look, you've been drinking.
16 You got up with a beer in your hand. I don't want you -- my
17 13-year-old son is here with you. I don't want you going
18 anywhere with him. I don't want you endangering my son's
19 life."

20 A I don't want you leaving in the car. You're
21 already drinking.

22 Q And today you come in and testify that when you
23 got back, you talked to your son, confronted Tracy and he
24 had been to Wal-Mart and your sister's house and some burger
25 place that I can't remember the name of.

1 A Sack-a-Burger.

2 Q Sack-a-Burger?

3 A Yeah.

4 Q Okay. Ma'am, are you sure about that?

5 A Yes, sir.

6 Q Ms. Killough, why then on December 23rd of 2003,
7 why did you, in this sworn statement to Steve Chaney, tell
8 him that on the 25th that your ex-husband took you to the
9 ER, "and Tracy stayed at my house with my 13-year-old son
10 until I returned"?

11 A When I made that statement, I did not know I was
12 going to have to put the exact dates on everything, because
13 that's why it says on or about November 25th.

14 Q No, I'm not talking -- I don't care about the
15 date, ma'am. I really don't.

16 A That's what you're asking.

17 Q No, what I'm asking you is, why did you in this
18 sworn statement right here, why did you write on here "Tracy
19 stayed at my house with my 13-year-old son until I
20 returned"? Why did you write that in your own handwriting,
21 a sworn statement, and then come in here and tell this jury
22 the story you told them today?

23 A That's what -- he was at my house on November 28th
24 watching my 13-year-old son. I was at the emergency room.

25 Q There's not one word in that statement, that sworn

1 statement to Lieutenant Chaney about him leaving, about you
2 telling him not to leave, about him going to the Wal-Mart or
3 any burger place or your sister's house or anything else, is
4 there?

5 A Not in the statement, no.

6 Q In fact, it says that he stayed there with your
7 13-year-old son until you returned. Would you agree that's
8 maybe a slight bit inconsistent with your testimony today?

9 A It probably seems to be, yeah.

10 Q Is the answer to that question as truthful as the
11 rest of your testimony?

12 MR. BINGHAM: Judge, that question is -- and
13 he knows it's an objectionable question.

14 THE COURT: I'll sustain the objection.

15 MR. BINGHAM: Ask the jury to disregard it.

16 THE COURT: I sustained the objection.

17 Q (By Mr. Perkins) Carolyn Click was your aunt,
18 wasn't she?

19 A Yes, sir.

20 Q And you loved your aunt, didn't you?

21 A Yes.

22 Q And you want to see whoever killed your aunt to be
23 punished justly; is that all correct?

24 A Yeah.

25 Q Do you think it's right for you or any other

1 witness to come in here and exaggerate?

2 A Do I think it's right? No.

3 Q Do you think it's right for you or any other
4 witness to come in here and to tell material falsehoods?

5 MR. BINGHAM: Judge, I'm going to object to
6 the form of the question unless he wants to ask her if she's
7 done that.

8 MR. PERKINS: I'll ask her --

9 MR. BINGHAM: And the question leaves a wrong
10 impression with the jury by stating facts.

11 THE COURT: Mr. Bingham, he can ask her that
12 question.

13 Ask her, Mr. Perkins.

14 Q (By Mr. Perkins) I'll just ask you, do you want
15 him to get the death penalty?

16 MR. BINGHAM: Judge, we'll go into that.

17 THE COURT: No. Mr. Perkins, as -- no,
18 Mr. Bingham. I'll overrule the objection. Direct the
19 question to her about whether or not she's testified to any
20 falsehoods.

21 MR. BINGHAM: Judge, is the Court precluding
22 me from going into things that she might know?

23 THE COURT: Mr. Bingham, I'm not precluding
24 you at this point from going into anything. What I'm trying
25 to do is rule on your objection to Mr. Perkins' question.

1 MR. BINGHAM: Thank you, Judge. I'm sorry.

2 THE COURT: That's what I'm doing at this
3 point. And your objection is overruled.

4 Go ahead. You may have to restate it,
5 Mr. Perkins.

6 Q (By Mr. Perkins) Do you understand the question?

7 A Yes. Do I want him to go to the death penalty?
8 No. He's family.

9 Q No.

10 THE COURT: No, ma'am, just a minute. The
11 objection to that was sustained. I'm talking about your
12 other question.

13 MR. PERKINS: She's answering the wrong
14 question.

15 THE COURT: Yes. That's why I said I think
16 it would probably be better if --

17 Q (By Mr. Perkins) Do you think it's right -- do you
18 think it's right for you or any other witness to come in
19 here and materially -- intentionally, materially mislead a
20 jury?

21 A No, it's not right.

22 MR. PERKINS: I don't have any other
23 questions.

24 MR. BINGHAM: Thank you.

25 REDIRECT EXAMINATION

1 BY MR. BINGHAM:

2 Q Did you do that?

3 A No, I did not.

4 Q Let me ask you something.. As we come in here, the
5 process is the lawyers get to go to law school and they get
6 to do this for 15 years, 10 years. And we get to come in
7 and say, "You know, this is what's important to put in a
8 statement." How many statements would you say you've
9 written in regards to a criminal offense? Is this the first
10 statement you've ever given the police?

11 A No.

12 Q How many have you given in the past?

13 A Probably two.

14 Q Regarding someone else?

15 A Correct.

16 Q Now, if I asked you -- remember Mr. Perkins
17 saying, did they talk you to about being charged with
18 capital murder, tell me what the capital murder statute
19 says.

20 A I don't know.

21 Q Can you tell me what section it is out of the
22 Penal Code?

23 A No.

24 Q Can you tell me what would and would not be
25 important in proving capital murder?

1 A No.

2 Q Well, can you tell me -- if I ask you what would
3 be important evidence for me to know that you know about
4 Tracy Beatty in proving capital murder, could you tell me?

5 A No.

6 Q When law enforcement got you out there at the
7 scene that day and gave you that statement, did they tell
8 you what to write?

9 A No.

10 Q What did they tell you?

11 A Write a statement.

12 Q Now, they told to you write a statement.

13 A Correct.

14 Q They gave you no details about what would or would
15 not be important?

16 A Correct.

17 Q Did they try to influence you in any way as to
18 what to write?

19 A No.

20 Q I mean, Mr. Perkins is taking you through and
21 saying, "Well, nowhere in the statement did you talk
22 about -- that Carolyn Click denied letting -- that Carolyn
23 Click told the defendant he couldn't drive her car." Well,
24 think about that. In the scheme of the death of Carolyn
25 Click, would that be very -- do you think that that would be

1 very important to you?

2 A I don't feel it would be.

3 Q Well -- okay. That's the point. You don't know
4 anything about capital murder, do you?

5 A No.

6 Q I mean, if you're writing a statement about what
7 you know, do you think that one statement that was made some
8 time previous that she denied letting Tracy Beatty use the
9 car, do you think that would be something important to put
10 in your statement?

11 A No.

12 Q Might be important to lawyers, right?

13 A Correct.

14 Q But it might not be important to you?

15 A Correct.

16 Q Now, if Tracy Beatty had said to you, "I killed
17 her," would that be something important to you?

18 A Yes.

19 Q You don't know the specifics of prosecution of
20 capital murder cases, fair?

21 A Fair.

22 Q Well, how about the fact that he stopped at
23 Sack-a-Whack or Sack-a-Burger, whatever it's called, would
24 you think the fact that he stopped at Sack-a-Burger would be
25 important to you, would be important in the prosecution of

1 him for capital murder?

2 A No.

3 MR. PERKINS: Objection as to relevancy,
4 whether she thinks it's important or not doesn't matter,
5 Judge.

6 THE COURT: Overruled. Go ahead,
7 Mr. Bingham.

8 Q (By Mr. Bingham) I mean, Mr. Perkins is sitting
9 here called you, basically, a liar.

10 MR. PERKINS: Judge, I object to that.

11 THE COURT: I'll sustain the objection to
12 that.

13 MR. BINGHAM: I'll rephrase it.

14 Q (By Mr. Bingham) Mr. Perkins has gotten here
15 because you've given testimony against his client that
16 hurts.

17 A Correct.

18 MR. PERKINS: I object to that, Judge. I
19 object to that, Judge. Ask to approach the bench for a
20 side-bar.

21 THE COURT: Just a second, Mr. Perkins. I
22 sustain the objection and instruct the jury to disregard
23 Counsel's statements about testimony that hurts.

24 MR. PERKINS: Ask to approach the bench for a
25 side-bar, Judge.

1 THE COURT: That's fine. Go ahead.

2 (At the bench, on the record.)

3 MR. PERKINS: I'm not going to allow him to
4 continue to strike at the defendant over my shoulder, Judge,
5 and if he's going to stand up and preach and say, "I'm
6 calling her a liar" and stuff, he's going to get a preaching
7 objection right back on him. Fair warning.

8 THE COURT: Just instruct -- you don't have
9 to warn the Court. Just instruct them --

10 MR. PERKINS: I'm not talking to the Court.

11 THE COURT: I've just instructed the jury to
12 disregard. Let's go.

13 (End of bench conference.)

14 THE COURT: The next question, Mr. Bingham,
15 unless you need to rephrase that one or go back over it.

16 MR. BINGHAM: I'll rephrase it.

17 Q (By Mr. Bingham) My point is, Carolyn, you
18 heard -- excuse me -- Stacey, you heard him say to you -- I
19 think the last thing Mr. Perkins said to you was something
20 about do you think it's right to give false testimony under
21 oath, do you think it's right to mislead a jury; do you
22 remember that?

23 A Yes.

24 Q Now, Mr. Perkins is asking you those questions.
25 Let's put it in the context of what is and is not important

1 in the prosecution of a capital murder case and what you as
2 someone who did not go to law school, is not a prosecutor or
3 a defense attorney would know to be important. Do you think
4 it would be important that at some point Carolyn Click had
5 denied the defendant the use of her car?

6 A Would I think it's important? No.

7 Q Do you think it's important that at some point he
8 stopped at Sack-a-Burger?

9 A No.

10 Q Do you think it was important that the second time
11 he showed --

12 MR. BINGHAM: Can I approach the witness?

13 THE COURT: Yes.

14 Q (By Mr. Bingham) Is this your same statement right
15 here, State's Exhibit 24 (indicating)?

16 A Yes.

17 Q Both pages?

18 A Yes.

19 MR. BINGHAM: We would offer State's
20 Exhibit 24, show to Mr. Perkins.

21 MR. PERKINS: Approach, Judge?

22 THE COURT: Yes.

23 (At the bench, on the record.)

24 MR. PERKINS: Same objection as previously.

25 This was not used to impeach her. Additionally, it contains

1 extraneous information in there.

2 MR. BINGHAM: Yeah. We're offering it, and
3 I'll tell you why. Because he has made it look like
4 she's -- he is questioning her -- he has questioned her
5 about her report extensively.

6 THE COURT: I'm sorry. What?

7 MR. BINGHAM: Mr. Perkins has questioned this
8 witness extensively about what you did and did not put in
9 her statement. What she did put in her statement is a lot
10 of relevant information on the issue, but Mr. Perkins --
11 about the fact that this defendant, for instance, was
12 arrested at her house on the 18th, which I skipped over, and
13 Mr. Perkins went right into, and the fact that this
14 defendant had a hand cut out there that night.

15 Now, she is putting that in her statement and
16 including that information and a lot of other information
17 that she deems relevant. And he -- Mr. Perkins comes and
18 cross-examines her like her statement contains no relevant
19 information.

20 And our point is she gave the law enforcement
21 a lot of relevant information, information that she deemed
22 to be appropriate, and that statement includes it. ,

23 THE COURT: Well, do you -- are you asking --
24 you're offering her whole statement. You can go over with
25 the witness in response to that cross-examination if it's

1 admissible in -- if you have admissible statements in there
2 that she put in.

3 MR. BINGHAM: Well --

4 THE COURT: And I'll have to read the
5 whole -- I don't know what all is in here.

6 MR. BINGHAM: Okay.

7 THE COURT: Mr. Bingham, I will allow you to
8 go through, in response to their cross, and ask her about
9 information or statements that she put in this statement
10 that he will be able to object to, you know, them if he
11 doesn't believe they're admissible.

12 Is it your position everything in this
13 statement is admissible?

14 MR. BINGHAM: Yes, sir, absolutely. I think
15 he has put it into issue. He has put her statement into
16 issue. "You didn't include this; you didn't include this;
17 this is not true; that's not true."

18 I can corroborate that handgun through my --
19 through other people, and that is the truth off her
20 statement. I can go through here and show all of the stuff
21 she put in her statement. It is consistent.

22 THE COURT: What would be the basis of your
23 objection, Mr. Perkins?

24 MR. PERKINS: My objection is, first of all,
25 when confronted with prior inconsistent statements, she

1 acknowledged that they were prior inconsistent statements.

2 THE COURT: Yeah, that's correct.

3 MR. PERKINS: So that's not admissible. That
4 doesn't make it admissible that she's been confronted with
5 prior inconsistent statements. And for them to think, "Hey,
6 we get to put in this extraneous stuff," I didn't ask one
7 word about the defendant's arrest or one word about that
8 extraneous offense. I didn't ask one word about that.

9 And so for them to think I can't properly
10 cross-examine a witness without making the entirety of her
11 statement admissible is just nuts. I've never heard of
12 such.

13 MR. BINGHAM: Judge --

14 THE COURT: The first part there in terms of
15 extraneous offense?

16 MR. PERKINS: And the last part of it, Judge,
17 I didn't ask her anything about that.

18 MR. BINGHAM: But he asked questions her on
19 the times that she had actually been to the house. That's
20 where that October date came up.

21 THE COURT: Mr. Bingham, I'll allow you to go
22 through and ask her about what is in the statement to show
23 that she didn't tell Detective Chaney, but she admitted
24 that -- I mean, on cross, she agreed with Mr. Perkins, that
25 what he was asking her was not in the statement.

1 MR. BINGHAM: I'll tell you what, I will not
2 get --

3 THE COURT: That's the thing. She didn't --
4 she admitted it was not in the statement, everything asked
5 her about, that you can go over.

6 MR. BINGHAM: Okay. I won't get into the
7 extraneous.

8 THE COURT: There's some extraneous offenses
9 in here, and the Court is not just going to admit the
10 statements of those extraneous offenses.

11 MR. BINGHAM: Okay. Well, I understand the
12 Court's ruling. I do. And I'll keep it to what he --

13 THE COURT: I mean, if you have the --
14 obviously, there's other matters in there, but if you want
15 to go through and ask her about what she did tell Lieutenant
16 Chaney --

17 MR. BINGHAM: Okay.

18 THE COURT: -- in response to the
19 cross-examination, and the cross-examination tended to show
20 that she didn't tell him certain things, but I'll allow you
21 to do that. I'm not going to admit that statement with
22 those extraneous offenses. You're just offering the whole
23 statement with the extraneous offenses?

24 MR. BINGHAM: Correct. Okay.

25 THE COURT: I'm not going to admit it under

1 those circumstances.

2 (End of bench conference.)

3 Q (By Mr. Bingham) Ms. Killough, when law
4 enforcement gave you the statement, did they do this:
5 "Ms. Killough, here's blank sheets of paper, go write down
6 what you know"?

7 A Basically, yeah.

8 Q Did they add anything else?

9 A No.

10 Q Now, when you came to the District Attorney's
11 Office, we had already had the benefit of your statement,
12 didn't we?

13 A Yes, sir.

14 Q And you would have to assume, judging by the
15 amount of stuff on our desks, a lot of other information?

16 A Correct.

17 Q And we asked you very specific questions, did we
18 not?

19 A Yes, you did.

20 Q Did anyone in the District Attorney's Office ever
21 suggest to you how to answer a question?

22 A No.

23 MR. PERKINS: Object to leading.

24 THE COURT: I'll overrule the objection.

25 Q. (By Mr. Bingham) Did they ever suggest to you

1 how to answer a question?

2 A No, you did not.

3 Q But did we ask you very specific questions based
4 on --

5 MR. PERKINS: Object to leading.

6 MR. BINGHAM: I'll rephrase it.

7 THE COURT: Rephrase it.

8 Q (By Mr. Bingham) What type of questions did we ask
9 you?

10 A Very direct, specific questions.

11 Q Now, in this case, when Mr. Perkins asked you,
12 "Well, don't you think it would be important that Carolyn
13 Click denied the defendant the use of her vehicle," to this
14 date, do you know why that is or is not important?

15 A No.

16 Q And when you filled out your statement, is that
17 something that you knew about?

18 A I knew when I filled my statement out that that
19 question had been asked by Tracy to his mom.

20 Q But did you think it was important in proving that
21 a capital murder had or had not occurred?

22 A No.

23 THE COURT: Ma'am, be sure and keep your
24 voice up a little bit. Speak directly into the microphone
25 so the jurors over there in the back can hear.

1 MR. BINGHAM: May I approach the witness?

2 THE COURT: Yes.

3 Q (By Mr. Bingham) The questions that Mr. Perkins
4 propounded to you about your statement regarding the dates,
5 the 25th and the 27th, you don't include the term 27th
6 there, do you?

7 A Correct.

8 Q But are the facts that are consistent with both
9 dates in your statement?

10 A Most of them, yes.

11 Q Now, in fact --

12 A What I felt was important.

13 Q You talk about Mr. Beatty's showing up on the
14 25th, do you not?

15 A Yes, I do.

16 Q And you go on into facts on the 27th, but you
17 don't put the 27th?

18 A Right.

19 MR. PERKINS: Judge, I'm going to object to
20 leading.

21 THE COURT: That is leading.

22 MR. BINGHAM: I'll rephrase.

23 THE COURT: I'll sustain the objection.

24 Q (By Mr. Bingham) As you go through this statement,
25 what facts from what -- let me back up and ask it this way.

1 Are all the facts in this statement, did they
2 all occur on one date?

3 A No.

4 Q Are they in a proper chronological order?

5 A Yes.

6 Q But what is missing is what? What date is
7 missing?

8 A The 27th.

9 Q Now, at the time in here in your statement,
10 Mr. Perkins talks about never saying the defendant was drunk
11 on the 27th. In fact, you put extremely drunk in your
12 statement.

13 A Yes, I do.

14 MR. PERKINS: Judge, object to leading.

15 THE COURT: Don't lead her.

16 MR. BINGHAM: I'm sorry.

17 Q (Ey Mr. Bingham) Go ahead and read after where you
18 say -- use the term "extremely drunk." Go ahead and read
19 through here and into that next part right there
20 (indicating).

21 MR. PERKINS: Judge, I'm going to object to
22 her reading from a document that's not in evidence unless
23 he's asking her to read it to herself.

24 MR. BINGHAM: Sure I'm asking her to read it
25 to herself. I'm sorry.

1 THE COURT: Ma'am, he's asking you to just
2 read it to yourself. Don't read it out loud. Then he will
3 have a question for you.

4 THE WITNESS: Okay.

5 Q (By Mr. Bingham) In your statement, right after
6 the extreme -- the part where you talk about Mr. Beatty
7 being extremely drunk, what do you discuss?

8 A Him staying.

9 Q And do you discuss anything about him leaving and
10 coming back?

11 A Yes, sir.

12 Q Now, isn't that what you testified to he did on
13 the 27th?

14 A Yes.

15 Q But what you did is you left out what?

16 A The day.

17 Q The day being which?

18 A November 27th.

19 Q Now, does that mean -- does that make you a liar
20 or someone who misrepresents things under oath?

21 A No.

22 Q So because you don't know what exact facts --
23 because you don't think that the fact that the defendant --
24 that Carolyn Click denied the defendant the use of her car
25 would prove a capital murder, because you don't know that,

1 and because you left out the 27th, you're supposed to be, I
2 guess, misrepresenting something?

3 MR. PERKINS: Judge, is there a question in
4 here?

5 MR. BINGHAM: I'll rephrase it.

6 MR. PERKINS: Just let them switch seats, and
7 it will be a lot faster.

8 THE COURT: I think he was asking her if
9 she's misrepresented anything. Just rephrase the question,
10 Mr. Bingham.

11 MR. BINGHAM: Sure.

12 THE COURT: Is that an objection,
13 Mr. Perkins?

14 MR. PERKINS: Yes, that was.

15 THE COURT: I'll sustain the objection. Just
16 rephrase it.

17 Q (By Mr. Bingham) Did you misrepresent something
18 when you left out that Carolyn Click denied the defendant
19 the ability to drive her car?

20 A Did I misrepresent it?

21 Q Yes?

22 A No, I don't feel that I did.

23 Q Were you trying to misrepresent anything when you
24 left out the date, the 27th?

25 A No.

1 Q Now, you didn't put in here in your statement
2 Mr. Perkins talked to you about the -- about you asking the
3 defendant where Carolyn was, right?

4 A Correct.

5 Q Did you think that that was going to be important,
6 the fact that you had asked the defendant where Carolyn was?

7 A No, sir.

8 Q In fact, what you did write is two pages of
9 information that you knew regarding those days.

10 A Correct.

11 Q Now, you never mentioned -- when you wrote your
12 statement on December 23rd, where were you?

13 A At my sister's house.

14 Q Who all was there?

15 A Oh, my gosh. Cadaver dogs from Shreveport,
16 Louisiana, Henderson County Sheriff's Department, Smith
17 County Sheriff's Department, investigators. I believe that
18 was all that was there.

19 Q How long had you known that Carolyn Click -- how
20 long had you known Carolyn Click's body had been found, that
21 she was dead?

22 A At the time that I made the statement, I didn't
23 know.

24 Q At the time you gave this statement -- something
25 else. When you're talking about not including information

1 at the time when you gave this statement, did you even know
2 Carolyn Click was dead?

3 A No. I was told she was missing.

4 Q So if you don't know Carolyn Click is dead, how
5 would all the specific -- would the specific information
6 about Carolyn Click be important to you about whether or not
7 a capital murder was committed if you don't even know she's
8 dead? Would that even be important to you?

9 A No.

10 Q Did you know anything about the facts of the case?
11 Did you know any specifics about the facts of the case so
12 you could say, "Yeah, well, this information would be
13 important"?

14 A I didn't know anything.

15 Q So when you gave this statement, number one, you
16 didn't know Carolyn Click was even dead; is that true?

17 A True.

18 Q Did you know any facts about the case?

19 A No.

20 Q Did you know anything about the capital murder
21 statute?

22 A No.

23 Q Did you know what would or would not be important
24 in the prosecution of a capital murder case, should Carolyn
25 Click be found dead?

1 A No.

2 Q Did you know any -- let me back up.

3 When you gave this statement, did you try to
4 provide law enforcement with what -- did you try to write in
5 this statement -- so I don't ask a leading question, what
6 did you try to write in this statement? What information
7 did you try to write in there?

8 A Things that I knew for sure.

9 Q And things that you thought would be important?

10 A Yeah.

11 Q Now, did you put in here the description of
12 Carolyn's car?

13 A Yes, sir.

14 Q What did you put?

15 A It's on the second page, I believe.

16 MR. BINGHAM: May I approach the witness,
17 Judge?

18 THE COURT: Yes.

19 Q (By Mr. Bingham) Go ahead. Just show me on here
20 real quick, if you could.

21 A (Complies.)

22 Q All right. Okay. Now, why did you put that?

23 A They asked me if I could describe Carolyn's car
24 because they didn't -- at the time she was missing, nobody
25 knew, really, anything.

1 Q And that was the specific something that you were
2 asked when?

3 A The 23rd.

4 Q Was it before -- that was before, obviously, you
5 did your statement, they questioned you some?

6 A Yes.

7 Q Now, did you put in here a physical description of
8 Tracy Beatty?

9 A No.

10 Q I mean, my gosh, why not? I mean, I'm just kind
11 of, you know -- I mean, why not? Tracy Beatty is someone
12 they're talking to you about, and you don't even put in here
13 a physical description of Tracy Beatty? Were you trying to
14 mislead somebody?

15 A No.

16 Q Wouldn't that be important?

17 A I guess.

18 Q Well, I mean, I'm just wondering, if they're
19 investigating Tracy Beatty, do you see my point? Do you
20 understand?

21 A Yes.

22 Q Let me talk about -- when you came up, when was it
23 that we talked to you?

24 A Friday.

25 Q When you came up Friday, we talked to you for

1 about how long would you say?

2 A Maybe an hour.

3 Q At any time, did anyone ever suggest what you
4 should say?

5 A No.

6 Q Did we ever provide you with an answer to any
7 question, tell you what your answer should be?

8 A No.

9 Q Did we ask you very specific questions?

10 A Very direct and specific, yes.

11 Q Were you informed that what we expected you to do
12 was tell the truth?

13 A Yes.

14 MR. BINGHAM: We'll pass the witness.

15 RECROSS-EXAMINATION.

16 BY MR. PERKINS:

17 Q When you visited with the District Attorney's
18 Office this past Friday -- and there's nothing wrong with
19 you talking to the State prior; that's expected.

20 When you talked to the District Attorney's
21 Office Friday, did you tell them, "Hey, even though my
22 statement to Steve Chaney says he was extremely drunk, that
23 was the wrong date?"

24 A When they asked me about my statement if it was
25 true, I said yes with the exception of I didn't know that

1 the dates have to be right in there.

2 Q So you told them that?

3 A I told them that.

4 Q And did you tell them, "Hey, I know that my
5 statement says that he stayed at my house with my
6 13-year-old son until I returned, but the truth is this
7 other thing?"

8 A No, they --

9 Q Did you tell them that?

10 A No. They specifically asked me on what day did.

11 Q I'm not talking about the date, ma'am. I'm
12 talking about you in your own handwriting, writing down
13 "Tracy stayed at my house with my 13-year-old son until I
14 returned."

15 A They asked me on what day.

16 Q I'm not talking about the day. When you wrote
17 those words down, those were the words that you picked?

18 A Yeah.

19 Q Right?

20 A Correct.

21 Q When you met with the DA's Office on Friday, did
22 you tell them, "Hey, look, I know that I wrote this down.
23 Tracy stayed at my house with my 13-year-old son until I
24 returned, but really what happened was this other thing?"

25 A No. They asked me on what day did that happen.

1 Q So today, when you testified, is the first time
2 they had heard all of this business about going all of these
3 different places?

4 A No.

5 Q I don't doubt you at all, Ms. Killough, when you
6 say that you didn't know that it was important at the time
7 you wrote your statement.

8 MR. BINGHAM: I'm going to object to his
9 statement. It's not a question.

10 MR. PERKINS: I'll rephrase it.

11 THE COURT: Go ahead.

12 Q (By Mr. Perkins) Do you remember when Mr. Bingham
13 was asking you, at the time, you wrote your statement, did
14 you think that this was important. At the time that you
15 wrote your statement, did you think that that was important?
16 Do you remember all of those questions?

17 A Yes, sir.

18 Q You would agree with me at the time you wrote your
19 statement, you had as much time as you wanted to write it.
20 Nobody was standing there telling you hurry up and finish.

21 A Correct.

22 Q You could write as little or as much as you wanted
23 to.

24 A Correct.

25 Q And that as hindsight goes, you left out a lot of

1 things that are now significant. Would you agree with that?

2 A Yeah.

3 Q You don't know? Are you telling us what is
4 significant now? I don't care about what was significant
5 then. I want to know what you think is significant now.

6 MR. BINGHAM: Objection to relevance is what
7 she thinks is significant or not significant.

8 THE COURT: I'll overrule the objection. If
9 she can answer the question, she can answer it.

10 A Do I think it's significant now? No, it's the
11 truth.

12 Q (By Mr. Perkins) Are you telling this jury that
13 you don't know anything more about what constitutes the
14 difference between murder and capital murder, as you sit
15 here on this witness stand right now, after having visited
16 with the State of Texas for an hour, after understanding
17 that Tracy Beatty has been charged, indicted for capital
18 murder, that as you sit here right now on August the 2nd,
19 2004, that you don't have any more idea about the difference
20 in murder and capital murder than you did at the time you
21 wrote this statement?

22 A I do not know the difference.

23 Q Don't know the difference?

24 A No, I don't.

25 Q State's never discussed with you what the State

1 has to prove?

2 A No.

3 Q Never?

4 A No.

5 Q Who was around to hear this alleged conversation
6 between Tracy Beatty and Carolyn Click about the use of the
7 car?

8 A My sister was there.

9 Q What's her name?

10 A Tonya Walker.

11 Q Tonya Walker. And who else?

12 A Her, Tonya's husband, James Walker was there, but
13 he's deaf, so...

14 Q What was Mr. Beatty's reaction when he asked for
15 permission and was denied permission to use the car?

16 A He didn't have a shocked look on his face.

17 Q Just let it go?

18 A Yeah.

19 Q Ever seen Tracy Beatty driving anything other than
20 Carolyn Click's car?

21 A No.

22 Q Have you ever seen him driving at all?

23 A No.

24 Q Have you ever known as to whether or not he had a
25 driver's license?

1 MR. BINGHAM: Objection, Judge, be based on
2 hearsay.

3 MR. PERKINS: I'm just asking if she's seen a
4 driver's license.

5 THE COURT: If she knows, she can answer. If
6 she doesn't know, she can answer.

7 A If I know if he has a driver's license, that I do
8 not know.

9 Q (By Mr. Perkins) You don't know one way or the
10 other.

11 MR. PERKINS: If I could have one more
12 second, Judge. I think I'm finished. I certainly hope so.

13 Q (By Mr. Perkins) Now, when you say -- let me get
14 this straight, because back on the 23rd of December, when
15 you told Steve Chaney it was the 23rd that he was extremely
16 drunk. Today you say it was the 27th, right?

17 A It was the 27th.

18 Q On the 27th when he was extremely drunk, ran over
19 the signs, came back --

20 A Yes, sir.

21 Q -- did you call the police that day?

22 A No, sir.

23 Q On the 28th when you say that he was drinking and
24 that he took your son to all of these different places, did
25 you call the police that day?

1 A No, sir.

2 Q I don't have any other questions of you, ma'am.

3 MR. BINGHAM: Just one question, Judge.

4 THE COURT: Just one.

5 REDIRECT EXAMINATION

6 BY MR. BINGHAM:

7 Q When did you tell Steve Chaney it was the 23rd
8 instead of the 27th?

9 A Of what?

10 Q I don't know. Mr. Perkins just asked you.

11 MR. PERKINS: The 25th.

12 MR. BINGHAM: I thought the record said 23rd.

13 THE COURT: I think you said the 23rd. Go
14 ahead and ask your question.

15 Q (By Mr. Bingham) Well, I'm just wondering.
16 Mr. Perkins just asked you, you told Steve Chaney it was the
17 23rd. When did you ever tell Steve Chaney the 23rd?

18 A I never -- that's the day my statement was made.

19 MR. BINGHAM: We don't have any further
20 questions, Judge.

21 THE COURT: Anything else, Mr. Perkins?

22 MR. PERKINS: No, Your Honor. I would just
23 like for her to remain subject to re-call.

24 THE COURT: She will.

25 Ma'am, you will be able to step down from the

1 witness stand now. You will be still under the Rule of
2 Witnesses, so do not discuss your testimony with any other
3 person. You will be subject to re-call by either the State
4 or Defense, so be sure the District Attorney's Office has a
5 number where they can reach you.

6 You may step down. Thank you. Ma'am, you
7 can go ahead and step down.

8 (The witness leaves the courtroom.)

9 THE COURT: Ladies and Gentlemen, we're going
10 to go ahead and recess now. It's 5:30. I know it's been a
11 little bit of a lengthy afternoon, I'm sure, for you. But
12 we're going to go ahead and recess now, and we'll see you at
13 8:30 in the morning in the jury room. Just remember all of
14 your instructions.

15 All rise.

16 (The jury leaves the courtroom.)

17 (Open court, defendant present, no jury.)

18 THE COURT: Okay. Mr. Bingham?

19 MR. BINGHAM: Judge, we want to call Tonya
20 Walker, but I don't want anyone from our office to contact
21 her or the Defense to contact her based on -- and I don't
22 know if the Defense would. Would the Court -- if we gave
23 the Court the number -- she's been sworn in. Could the
24 Court staff call her to come to court tomorrow, based on the
25 fact that he says she was present? I just don't want our

204

1 office to call her, so that Mr. Perkins could question her,
2 "Well, the State talked to you last night." You see what
3 I'm saying?

4 THE COURT: Let me see if I understand what
5 you're saying. You're asking that the Court staff contact
6 the witness to have the witness to come here tomorrow?

7 MR. BINGHAM: Yes. I don't know -- is she
8 coming any way?

9 MR. HARRISON: She's here now.

10 MR. BINGHAM: Would the Court instruct her to
11 be back at 8:00 tomorrow?

12 THE COURT: Have her come into the courtroom.
13 What time do you want her back?

14 MR. BINGHAM: What time do we start? 8:30?

15 THE COURT: 8:30 it will be.

16 Ask her to come in, Mr. Jim.

17 What's her name?

18 MR. BINGHAM: Tonya Walker.

19 THE COURT: Ms. Walker, yes, ma'am. Could
20 you step around, please?

21 Ms. Walker, the Court has been advised that
22 you will be the State's first witness in the morning at
23 8:30. Have you already been sworn in?

24 THE WITNESS: Yes, sir, earlier.

25 THE COURT: If you would please be back

1 present right outside the door to this courtroom a little
2 bit before 8:30 in the morning. You will be the State's
3 first witness.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 We're in recess.

7 (The witness leaves the courtroom.)

8 (Open court, defendant present, no jury.)

9 THE COURT: Let me get back on the record
10 while Mr. Beatty is still here.

11 Okay. Back on the record in Cause
12 No. 241-0978-04, the State versus Tracy Beatty. State's
13 counsel is present, defense counsel is present, the
14 defendant is present.

15 Mr. Hawk, we have offered for purposes of a
16 hearing outside the presence of the jury in regard to the
17 witness -- what was the witness' name.

18 MR. HAWK: Jay Patzke.

19 THE COURT: Patzke. What did you finally
20 mark that so I can be sure --

21 MR. HAWK: I think I put Defendant's
22 Exhibit 1 right on it.

23 THE COURT: All right. Defendant's Exhibit 1
24 is admitted for -- what was it?

25 MR. HAWK: It was -- this is a certificate of

1 mandatory supervision, and it was offered in support of our
2 objections to his testimony.

3 THE COURT: That Defendant's Exhibit 1 is
4 admitted for purposes of the hearing regarding the witness'
5 testimony. I believe that hearing -- that was the hearing
6 outside the presence of the jury. That's admitted.

7 MR. HAWK: This is also a record regarding
8 this certificate for mandatory supervision. It's in the
9 same group of records that he brought with him today.

10 MR. BINGHAM: Is that just for record
11 purposes only?

12 THE COURT: For record purposes only. For
13 record purposes only, for purpose of the hearing outside the
14 presence of the jury. Record purposes only.

15 Mr. Hawk had marked it, and I just don't
16 think I ever got it admitted.

17 MR. HAWK: Thank you, Judge.

18 THE COURT: We'll be in recess.

19 (Proceedings continued in Volume 39.)
20
21
22
23
24
25

1 STATE OF TEXAS *


2 COUNTY OF SMITH *


3 We, STEVE R. AWBREY, CSR, Official Court Reporter, and
 4 KIM CHRISTOPHER, CSR, RPR, Deputy Official Court Reporter,
 5 for the 241st Judicial District Court in Smith County,
 6 Texas, do hereby certify that the above and foregoing
 7 contains a true and correct transcription of all of the
 8 proceedings in the foregoing styled and numbered cause, all
 9 of which occurred in open court or in chambers and were
 10 reported by us.

11 We further certify that this transcription of the
 12 record of the proceedings truly and correctly reflects the
 13 exhibits, if any, offered by the respective parties.

14 Witness our hand this the 19 day of

15 May, 2005.

16
 17
 18
 19 
 20 KIM CHRISTOPHER, CSR, RPR
 21 Texas CSR Number 4219
 22 Expiration date: 12-31-06
 23 Deputy Official Reporter
 24 241st Judicial District Court
 25 Smith County, Texas
 100 North Broadway, Room 304
 Tyler, Texas 75702
 Telephone: (903) 535-0575


 STEVE R. AWBREY, CSR
 Texas CSR Number 3940
 Expiration date: 12-31-05
 Deputy Official Reporter
 241st Judicial District Court
 Smith County, Texas
 100 North Broadway, Room 221
 Tyler, Texas 75702
 Telephone: (903) 535-0603

STEVE R. AWBREY, CSR AND KIM CHRISTOPHER, CSR, RPR
 241ST JUDICIAL DISTRICT COURT
 SMITH COUNTY, TEXAS